

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

IRA KLEIMAN, as the Personal Representative
of the ESTATE OF DAVID KLEIMAN,
Plaintiff-Appellant,
W&K INFO DEFENSE RESEARCH, LLC,
Plaintiff,
—v.—

CRAIG WRIGHT,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

SUPPLEMENTAL APPENDIX
VOLUME XIV OF XVII

ANDREW S. BRENNER
LASELVE ELIJAH HARRISON
ALEXANDER J. HOLTZMAN
SAMANTHA MARIE LICATA
MAXWELL PRITT
STEPHEN NEAL ZACK
BOIES SCHILLER FLEXNER LLP
100 SE Second Street, Suite 2800
Miami, Florida 33131
(305) 539-8400

DEVIN FREEDMAN
FREEDMAN NORMAND
FRIEDLAND, LLP
1 SE Third Avenue, Suite 1240
Miami, Florida 33131
(305) 306-9211

—and—

KYLE ROCHE
STEPHEN LAGOS
ROCHE FREEDMAN LLC
99 Park Avenue, Suite 1910
New York, New York 10016
(646) 350-0527
jcyrulnik@rcfllp.com
Attorneys for Plaintiff-Appellant

ANDRÉS RIVERO
JORGE A. MESTRE
AMANDA MCGOVERN
ALAN H. ROLNICK
ROBERT J. KUNTZ JR.
ALLISON HENRY
RIVERO MESTRE LLP
2525 Ponce de León Boulevard, Suite 1000
Miami, Florida 33134
Telephone: (305) 445-2500
Facsimile: (305) 445-2505
arivero@riveromestre.com
jmestre@riveromesre.com
amcgovern@riveromestre.com
arolnick@riveromestre.com
rkuntz@riveromestre.com
ahenry@riveromestre.com

MICHAEL A. FERNÁNDEZ
AMY C. BROWN
RIVERO MESTRE LLP
565 Fifth Avenue, 7th Floor
New York, New York 10017
Telephone: (212) 880-9451
Facsimile: (212) 504-9522
mfernandez@riveromestre.com
abrown@riveromestre.com
Attorneys for Defendant-Appellee

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1 exceeds the scope of direct.

2 THE COURT: Overruled at this point.

3 BY MR. ROCHE:

4 Q. You understand that Dr. Edman testified that 10 of the
5 documents that were collected by the Defendant in this
6 litigation were, in fact, forgeries?

7 A. I was here for that testimony, yes.

8 Q. And you reviewed the metadata that Dr. Edman submitted with
9 his report associated with forgeries one through 10, didn't
10 you?

11 MR. FERNANDEZ: Objection, Your Honor. It exceeds the
12 scope of direct.

13 THE COURT: I'll allow it. Overruled at this point.

14 THE WITNESS: I reviewed Dr. Edman's reports, yes.

15 MR. ROCHE: Dorian, if we could pull up the first
16 slide from Dr. Edman's presentation.

17 And, Your Honor, this is Plaintiffs' Exhibit 823. It
18 was previously admitted. We would like to publish it to the
19 jury.

20 THE COURT: All right. It's in evidence. You may.

21 BY MR. ROCHE:

22 Q. Mr. Chambers, you testified that you reviewed the metadata
23 submitted by Dr. Edman in his report associated with
24 Plaintiffs' Exhibit 823. What did you conclude about the
25 cryptographic signature?

1 MR. FERNANDEZ: Objection, Your Honor. Exceeds the
2 scope of direct.

3 MR. ROCHE: Your Honor, he's testified that he's
4 reviewed this data.

5 THE COURT: Overruled. I'll allow it.
6 BY MR. ROCHE:

7 Q. What did you conclude about the cryptographic signature in
8 what Dr. Edman testified as forgery number one, Plaintiffs'
9 Exhibit 823?

10 A. I did not make a conclusion about the metadata
11 specifically.

12 Q. But you reviewed it?

13 A. I did.

14 Q. So did you come to any conclusion as to the date?

15 A. I reviewed Dr. Edman's reports to review his methodology
16 and look at his conclusions.

17 Q. Okay.

18 MR. ROCHE: Dorian, can we go to the next slide,
19 please.

20 BY MR. ROCHE:

21 Q. Mr. Chambers, you have Plaintiffs' Exhibit 823.2 in front
22 of you?

23 A. Yes. I see that.

24 Q. And you've reviewed this document?

25 A. I have seen this document, yes.

1 Q. Okay. And you didn't come to any conclusions?

2 MR. FERNANDEZ: Your Honor, if I can have a continuing
3 objection to this line of questioning. He's exceeding the
4 scope of direct.

5 MR. ROCHE: Your Honor, he's testified he reviewed
6 these documents.

7 THE COURT: I am certainly -- it goes to the
8 qualifications of the witness. I will allow it and I will give
9 you a continuing objection.

10 MR. FERNANDEZ: Thank you, Your Honor.

11 BY MR. ROCHE:

12 Q. Mr. Chambers, you reviewed lines 13 to 15 of Plaintiffs'
13 Exhibit 823.2?

14 A. As I mentioned, I reviewed Dr. Edman's reports for the
15 purposes of reviewing his methodology and coming to the
16 conclusions whether his methodology was flawed.

17 Q. But you didn't come to any conclusions about lines 13 to 15
18 in Plaintiffs' Exhibit 823.2?

19 A. I was not asked to come to any conclusions about that
20 specifically, no.

21 Q. In fact, you reviewed all of the metadata and cryptographic
22 signatures in forgeries one through 10, and you didn't come to
23 any conclusions about the exhibits associated with forgeries
24 one through 10?

25 A. As I mentioned, I was not asked to review those for the

1 purposes of coming to a conclusion about the metadata itself.

2 It was more looking at Dr. Edman's methodology.

3 Q. But you're not testifying -- you didn't testify during your
4 direct examination about Dr. Edman's methodology?

5 A. No.

6 Q. So you have no opinions as to whether or not forgery number
7 one is an authentic document?

8 MR. FERNANDEZ: Objection. Asked and answered, Your
9 Honor.

10 THE COURT: Sustained.

11 BY MR. ROCHE:

12 Q. Do you have any opinions as to whether any of forgeries one
13 through 10 are authentic documents?

14 MR. FERNANDEZ: Objection. Asked and answered, Your
15 Honor.

16 THE COURT: Overruled. I'll allow it.

17 BY MR. ROCHE:

18 Q. Do you have any opinions as to whether forgeries one
19 through 10 are authentic documents?

20 A. No.

21 Q. Okay. I'd like to change gears here and discuss the drives
22 you analyzed. You're not an expert on Bitcoin?

23 A. I do not consider myself an expert on Bitcoin, no.

24 Q. You're not an expert on cryptocurrencies?

25 A. No.

1 Q. You have no opinion one way or another as to whether
2 Dr. Wright stole Bitcoin from Dave or W&K?

3 A. I was not asked to look into that, no.

4 Q. You have no opinion one way or the other as to whether
5 Dr. Wright took intellectual property from Dave -- from Dave
6 Kleiman's estate or W&K?

7 A. No.

8 Q. And you didn't review any data related to that on any of
9 these drives?

10 A. No, not specifically related to that.

11 Q. Your role in this litigation was to perform data
12 collections, process those data collections, and perform a
13 forensic analysis of those data collections?

14 A. I was involved in the data collection process and the
15 forensic analysis, but I was not involved in processing.

16 Q. In fact, you were -- we were together when we collected
17 these five devices on the left side of the screen about a year
18 and a half ago?

19 A. That's right.

20 Q. Okay. And so you analyzed the 14 devices that were
21 provided to you by Plaintiff and Plaintiffs' counsel in this
22 litigation?

23 A. I analyzed the forensic images of those devices.

24 Q. Okay. And your opinion boils down to the fact that we'll
25 never know what is on -- before Dave Kleiman died, what was on

1 these 14 devices?

2 MR. FERNANDEZ: Objection, Your Honor.

3 Mischaracterizes his testimony.

4 THE COURT: Overruled. I'll allow it.

5 THE WITNESS: Can you repeat the question, sir?

6 BY MR. ROCHE:

7 Q. Your opinion boils down to: We will not know before Dave
8 Kleiman died what was on these 14 devices?

9 A. My opinion is that we will not know what was overwritten on
10 these drives and on these devices and what was there before the
11 actions that took place.

12 Q. And how many of the drives are you testifying had
13 overwritten data?

14 A. Thirteen of the 14.

15 Q. Thirteen of the 14. Okay.

16 When a file is deleted by a user -- I think we went through
17 an analogy earlier. When a file is deleted by a user, the file
18 allocation table -- when a file is deleted by a user, the file
19 allocation table tells the computer what can be removed and
20 overwritten and what cannot be?

21 A. The file table on the file system marks the space, the
22 areas where the file resides, as available to be overwritten.

23 Q. Okay. And so it's -- and I think you testified it's
24 equivalent to -- the file table we can think of as books in a
25 library. And files that are supposed to be there are -- or

1 files that a user wants to remove are marked for deletion, but
2 aren't actually moved off the bookshelf until something else
3 takes its place?

4 A. I think I testified that a file system is like a library,
5 not the file table.

6 Q. File system. Okay.

7 And the books are individual files in the library?

8 A. In the analogy that we're using, yes.

9 Q. Okay. So the file table's the library. The books are the
10 files?

11 A. The file table is the card catalog.

12 Q. The card catalog.

13 A. The file system is the library.

14 Q. File system's the library. Okay.

15 So -- and it's the card catalog is what marks things for
16 deletion so that they can be removed if space is needed?

17 A. It marks what's available to be overwritten and available
18 to be used by something else and what is in use, generally
19 speaking.

20 Q. But until the card catalog marks something for removal, the
21 book -- that book is not marked for deletion, right? So
22 basically it requires a user to tell the card catalog: "Hey,
23 this book no longer needs to be on the shelf." Is that a fair
24 characterization of the analogy you're using?

25 A. A user or a program, operating system, but yes.

1 Q. Okay. So it would be -- if I have a number of files on my
2 desktop and I delete one, that's the equivalent of telling the
3 card catalog that this can now be overwritten in the library,
4 can be taken off the shelf and removed and replaced with
5 something else?

6 A. With that analogy, yes.

7 Q. Mr. Chambers, you understand the devices you reviewed
8 belonged to Dave Kleiman?

9 A. Yes.

10 Q. And you have no evidence to suggest that Dave Kleiman
11 deleted or marked for deletion any files related to Bitcoin?

12 A. I can only opine on what is on the drives currently and
13 what I can determine from a forensic examination.

14 Q. I'm asking you: Do you have any evidence that Dave Kleiman
15 marked for deletion, before he passed away, files related to
16 Bitcoin -- marked them for deletion off the shelf?

17 A. No.

18 Q. What about any private keys?

19 A. No.

20 Q. So anything related to Bitcoin whatsoever?

21 A. No.

22 Q. Would it make sense for Dave Kleiman to delete files
23 relating to his private keys, to mark them for removal off the
24 shelf?

25 A. If you're referring to him specifically deleting a file

1 versus some other operation on the drive, I don't think I can
2 speculate on what would make sense related to cryptocurrency or
3 Bitcoin in that regard.

4 Q. Okay. And were you here, I believe it is two weeks ago
5 now, when Ira Kleiman testified about his use of his brother's
6 devices?

7 A. I was not here, but I did read the transcripts.

8 Q. Okay. And do you understand Ira Kleiman testified that he
9 did not delete, mark for deletion, files on these devices?

10 A. I don't believe that's correct.

11 Q. What's -- you're -- Ira Kleiman testified he marked for
12 deletion?

13 A. I'm sorry. Let me clarify. That is Ira Kleiman's
14 testimony, yes.

15 Q. And you did not find any Bitcoin private keys on any of the
16 14 devices that you reviewed?

17 A. No, I did not.

18 Q. You didn't find any -- and you only found one Bitcoin
19 public address on the devices you reviewed?

20 A. That's right, yes.

21 Q. And you reviewed the fragmented data?

22 A. Yes.

23 Q. What data did you -- what's the categories of data you
24 reviewed?

25 A. I reviewed data that we recovered from the devices via what

1 is called file carving. And file carving, to step back for a
2 second, is -- file carving is essentially recovering data from
3 the devices without the use of the original file system.

4 So in instances where the card catalog has been thrown out,
5 to use the library analogy, it's essentially wandering the
6 shelves trying to piece back together what was there, which can
7 be hit and miss and fairly difficult, since we don't have the
8 pointers to know exactly how things were put together in the
9 original place.

10 And so to answer your question, Mr. Roche, yes, I reviewed
11 fragmentary data, and deleted data, and data that was present
12 on the devices that was not overwritten.

13 Q. And you reviewed all that data, and you didn't find any
14 private keys in the devices?

15 A. I did not find any private keys on the devices. However,
16 as I mentioned, I'm not able to recover and examine data that
17 has been overwritten. I can only --

18 Q. Finish, please.

19 A. I can only look at data that has not been overwritten.

20 Q. You have no evidence that any private keys were
21 overwritten?

22 A. I did not see evidence of private keys being overwritten,
23 no.

24 MR. ROCHE: Your Honor, I think now is a good time for
25 a lunch break. I'll come back and I'll finish up 15 minutes,

1 20 minutes.

2 THE COURT: All right.

3 All right. Then, Ladies and Gentlemen, let's go ahead
4 and take our one-hour lunch recess and I will see you back at
5 2:00.

6 (Jury not present, 12:59 p.m.)

7 THE COURT: Okay. Have a pleasant lunch. I'll see
8 you back at 2:00.

9 (Recess from 12:59 p.m to 1:59 p.m.)

10 THE COURT: We're a little early. My apologies.

11 MR. RIVERO: We can proceed from the Defense, Your
12 Honor.

13 THE COURT: Do you want to wait for Ms. McGovern?

14 MR. RIVERO: Judge, no. It's okay if we start.

15 THE COURT: Are you certain?

16 MR. RIVERO: Yes.

17 THE COURT: Is Mr. Fernandez here?

18 MR. FERNANDEZ: Yes, Your Honor.

19 THE COURT: All right. Are they ready to go?

20 COURT SECURITY OFFICER: They are all here, Judge.
21 Ready to go.

22 THE COURT: Okay. All right, then. Let's bring in
23 the jury.

24 (Before the Jury, 2:00 p.m.)

25 THE COURT: All right. Welcome back, Ladies and

1 Gentlemen. Please be seated. I hope that you did have a
2 pleasant lunch and ready to get back to work.

3 We'll continue with the cross-examination of Mr.
4 Chambers.

5 MR. ROCHE: May it please the Court.

6 BY MR. ROCHE:

7 Q. I went over my notes at lunch and I just have one last
8 question for you, Mr. Chambers.

9 You have testified this morning about 14 of Dave Kleiman's
10 devices. Are you aware that the only person who has said that
11 there are Bitcoin private keys on these 14 devices is Craig
12 Wright?

13 A. I have not reviewed Dr. Wright's testimony in that regard,
14 no.

15 Q. No one else you're aware of has testified that there's
16 Bitcoin private keys on those 14 devices?

17 A. Not that I'm aware of.

18 MR. ROCHE: No further questions.

19 THE COURT: All right. Any redirect?

20 MR. FERNANDEZ: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. FERNANDEZ:

23 Q. Mr. Chambers, prior to lunch you testified about what
24 digital forensics is. Can you please remind the jury of what
25 is digital forensics.

1 A. Digital forensics is the scientific investigation analysis
2 and recovery of data on electronic media.

3 Q. And can digital forensics be used to determine whether a
4 device -- a document has been forged?

5 MR. ROCHE: Objection.

6 THE COURT: Overruled.

7 MR. ROCHE: Calls for speculation.

8 THE COURT: Overruled.

9 THE WITNESS: In my opinion, forgery implies intent.
10 That's my understanding of the word. And I would not use that
11 word in the context of digital forensics. And in my opinion
12 and my experience, digital forensics is not able to determine
13 if a document is a forgery or not.

14 BY MR. FERNANDEZ:

15 Q. And in your experience, have you ever been asked to
16 determine whether a document has been forged?

17 A. I have before, and I pushed back on that client and said
18 I'm not able to make that determination because digital
19 forensics is not able to apply intent based on digital
20 evidence.

21 Q. And does digital forensics permit you to ascribe conduct to
22 someone?

23 A. Digital forensics alone is not able to put a person behind
24 a keyboard. You would need other corroborating evidence to
25 assert that.

1 Q. And were you here for Dr. Edman's testimony?

2 A. I was, yes.

3 Q. And have you ever heard anyone in your field define forgery
4 in the way he did?

5 MR. ROCHE: Objection.

6 THE COURT: Sustained.

7 BY MR. FERNANDEZ:

8 Q. Did you review Dr. Edman's report?

9 A. I reviewed all of Dr. Edman's reports, yes.

10 Q. And in your opinion, would it be appropriate to describe a
11 document as forged based on metadata alone?

12 A. No.

13 Q. Did you review Dr. Edman's conclusion?

14 A. I did.

15 Q. And did you need to review any documents to opine on the
16 scientific basis of his opinion?

17 A. No. I was able to look at his conclusion and look at his
18 methodology without reviewing the documents themselves. I had
19 looked at his reports.

20 Q. And what about his methodology led you to your conclusion?

21 MR. ROCHE: Your Honor, I'm having trouble hearing.

22 If he can take off the mask. I think it's --

23 THE COURT: Well, you certainly don't need to take off
24 the mask, but if you want to speak right into the microphone.

25 MR. FERNANDEZ: Yes, Your Honor.

1 BY MR. FERNANDEZ:

2 Q. And what about Dr. Edman's methodology did you find
3 problematic?

4 A. Dr. Edman's methodology was flawed in several ways,
5 particularly -- and I'm happy to run through those if you would
6 like.

7 Q. Yes, please.

8 A. The first reason being that he failed to consider the
9 historical background and chain of custody of a document when
10 he was doing the analysis.

11 The second, he did not use, based on the reports that he
12 provided, forensic best practices for those documents during
13 the analysis of those documents.

14 And third, he did not independently verify the content and
15 source of documents where that option was available.

16 MR. FERNANDEZ: Thank you, Your Honor. No further
17 questions.

18 THE COURT: All right. Thank you.

19 Ladies and Gentlemen, you have the right to ask
20 questions to Mr. Chambers. Does anybody have a question?

21 If you do, just raise your right hand so I can give
22 you the time to write down your question.

23 Does anyone have any questions for Mr. Chambers?

24 All right. Seeing no questions.

25 Is Mr. Chambers excused?

1 MR. FERNANDEZ: Yes, Your Honor. He's excused.

2 THE COURT: All right. On behalf of the Plaintiffs?

3 MR. ROCHE: No further questions.

4 THE COURT: All right. Thank you, Mr. Chambers. You
5 are excused.

6 (Witness excused.)

7 THE COURT: And the Defendant's next witness, please.

8 MS. MCGOVERN: Your Honor, at this time, we would like
9 to play the videotaped deposition of Lynn Wright.

10 THE COURT: All right. And can you give me the date
11 of that deposition, please.

12 MS. MCGOVERN: Yes, Your Honor. January 13th, 2020.

13 THE COURT: All right. Thank you.

14 (Video played, 2:06 p.m. - 2:53 p.m.)

15 THE COURT: Have we concluded the testimony?

16 MS. MCGOVERN: Yes.

17 THE COURT: All right.

18 The Defendant's next witness.

19 MS. MCGOVERN: Yes. Your Honor, the Defendant calls
20 Don Lynam via video deposition.

21 THE COURT: And can you give me the date of the
22 gentleman's deposition.

23 MS. MCGOVERN: April 2nd, 2020, Your Honor.

24 THE COURT: Thank you.

25 (Video played.)

1 MS. McGOVERN: Could you stop for one second. I
2 apologize, Your Honor. Just for planning purposes, this video
3 is about an hour and 15 minutes long.

4 THE COURT: Why don't we stop it about 3:25, if we
5 can.

6 MR. RIVERO: Sure.

7 THE COURT: Thank you.

8 MS. McGOVERN: Could you start from the top, please.

9 (Video played, 2:54 p.m. - 3:24 p.m.)

10 THE COURT: All right. Thank you, Ms. McGovern.

11 At this point in time, Ladies and Gentlemen, let's
12 take a 20-minute recess.

13 (Jury not present, 3:25 p.m.)

14 THE COURT: Okay. We're on a 20-minute recess.

15 (Recess from 3:25 p.m. to 3:43 p.m.)

16 MS. McGOVERN: I apologize, Your Honor. We did not
17 realize you were here.

18 THE COURT: I think our clock in chambers is a
19 little -- I apologize. This is the second time I did that.

20 MS. McGOVERN: If it makes you feel any better, we
21 were all talking.

22 THE COURT: Let me say that I appreciate everybody
23 being so prompt when we take breaks.

24 MS. McGOVERN: We're prepared to proceed.

25 THE COURT: We're ready to proceed?

1 MS. MCGOVERN: Yeah. Just so Your Honor knows --

2 THE COURT: Certainly.

3 MS. MCGOVERN: -- we still have another 35 minutes on
4 the video, 40 minutes on the video, and then we'll call a live
5 witness and we'll be done.

6 THE COURT: All right. Thank you.

7 (Before the Jury, 3:45 p.m.)

8 THE COURT: All right. Welcome back, Ladies and
9 Gentlemen. Please be seated.

10 And we will continue with the testimony.

11 (Video played, 3:45 p.m. - 4:32 p.m.)

12 MS. MCGOVERN: Your Honor, at this time, we would call
13 Dr. MacIntyre.

14 THE COURT: All right. Certainly.

15 Good afternoon, sir. Let me ask that you step
16 forward, remain standing, raise your right hand to be placed
17 under oath.

18 DR. DUGALD STEWART MACINTYRE, DEFENSE WITNESS, SWORN

19 COURTROOM DEPUTY: Thank you.

20 THE COURT: Sir, I'm not certain if you were here when
21 it was announced, but we are following CDC guidelines. So to
22 the extent that you are fully vaccinated, and you feel
23 comfortable, you are permitted to take your mask off while you
24 are testifying.

25 THE WITNESS: Thank you.

1 I'm fully vaccinated.

2 THE COURT: Entirely your decision. I did want to let
3 you know, sir.

4 Mr. Kass?

5 DIRECT EXAMINATION

6 BY MR. KASS:

7 Q. Dr. MacIntyre, are you here to provide expert testimony?

8 A. That is correct.

9 Q. And what is the subject matter --

10 COURTROOM DEPUTY: I'm sorry. Mr. Kass, would you
11 please like to introduce the witness?

12 MR. KASS: Oh, sorry.

13 BY MR. KASS:

14 Q. Dr. MacIntyre, can you please state your name for the
15 record.

16 A. My name is Dugald Stewart MacIntyre, Jr.

17 Q. Dr. MacIntyre, are you here to provide expert testimony?

18 A. That's correct.

19 MR. RIVERO: I'm sorry, Your Honor. I'm having
20 trouble hearing Dr. MacIntyre.

21 THE COURT: Dr. MacIntyre, if you'll speak directly
22 into the microphone.

23 Thank you, sir.

24 THE WITNESS: Is that better?

25 MR. KASS: Moderately, but hopefully we'll see how it

1 goes.

2 BY MR. KASS:

3 Q. Dr. MacIntyre, what's the subject matter of your expertise
4 and the opinion that you will be providing today?

5 A. The general field of infectious disease.

6 Q. Is it with respect to any person in particular?

7 A. It's in respect to Mr. Kleiman.

8 Q. Is that Mr. David Kleiman?

9 A. That is correct.

10 Q. Are you being compensated for your work as an expert?

11 A. Yes, I am.

12 Q. How much is your compensation?

13 A. It's \$500 an hour, and that's across the board. It's
14 reviewing records, courtroom time, conference time.

15 Q. Could you tell the jury a little bit about your educational
16 history.

17 A. Well, I was privileged to graduate from one of the best
18 high schools in the country in East Grand Rapids, Michigan. I
19 went to undergraduate at Yale University in New Haven,
20 Connecticut, including one -- the third year I was in Ludwig
21 Maximilian University in Munich, Germany, for a third year in
22 Germany.

23 Following undergraduate, I wet to medical school at the
24 University of Michigan in Ann Arbor. Then I had a one-year
25 rotating internship at the University of Oregon in Portland.

1 Rotating means I rotated through various services: medicine,
2 surgery, pediatrics.

3 Following that, I had a three-year residency in internal
4 medicine back in Ann Arbor, University of Michigan. Then I had
5 two years' service in the US Army. I was posted to the Canal
6 Zone, one year in Colon on the Atlantic end and then the other
7 year at Gorgas Hospital on the Pacific end.

8 Then I had a two-year fellowship in infectious disease at
9 the University of Miami, Jackson Memorial Hospital and the
10 Miami Veterans Administration Medical Center.

11 Q. Dr. MacIntyre, after the fellowship, did you continue
12 working as a doctor?

13 A. Yes, I did. I had four years. I stayed on in the
14 full-time faculty at the University of Miami. I'm still at
15 Jackson and the VA. Following that I entered private practice,
16 where I have been ever since.

17 Q. In total, how many years have you been a practicing doctor?

18 A. Since 1975, including those four years on the full-time
19 faculty.

20 Q. And in how many of those years have you been specializing
21 in infectious disease?

22 A. Well, the entire time because that's where my fellowship
23 was, and I stayed on in that field.

24 Q. Have you ever worked at a VA hospital?

25 A. Yes, I have. I had experience at the Ann Arbor VA hospital

1 when I was a resident there, and then the Miami VA hospital
2 during my fellowship and time on full-time faculty.

3 Q. So in total, how much time have you worked or been a fellow
4 in a VA hospital?

5 A. Well, I've been on and off, because obviously I was not at
6 the VA the entire time. But it would be for a total of four --
7 four, six -- nine years.

8 Q. Are VA hospitals similar to typical hospitals?

9 A. In many ways they are, but they have substantial
10 differences as well.

11 Q. Could you tell the jury what those substantial differences
12 are.

13 A. Well, the first thing is the VA -- a VA hospital is part of
14 the VA system that has complete interchangeability of records
15 among the various VA hospitals.

16 Secondly, their patient population consists of veterans of
17 the United States military, and as such tend to be more men
18 than women, although that difference is starting to decrease
19 now.

20 Also, being associated with veterans, they tend to form --
21 they tend to function in many ways like the military,
22 particularly in their leave-of-absence regulations. It's
23 almost like a leave of absence in the military. If a furlough
24 from the hospital for an inpatient who is in the hospital --
25 there has to be a starting and ending time, it has to be

1 specifically ordered, and also a reason is given.

2 Q. Is another difference the likelihood of having interns or
3 fellows in the hospital?

4 MR. RIVERO: Objection. Leading.

5 THE COURT: Sustained.

6 BY MR. KASS:

7 Q. Dr. MacIntyre, are you aware of any additional differences
8 between a regular hospital and a VA hospital?

9 A. Well, when the VA system was first set up back in the
10 late -- in the 1940s, somebody had the good sense of
11 associating major VA hospitals with major universities, such
12 that the Ann Arbor VA, where I was, was University of Michigan,
13 and the VA in Miami is University of Miami.

14 As such, they are teaching hospitals. Now, that doesn't
15 mean that there are not other teaching hospitals. Jackson, for
16 instance. But as a teaching hospital, they have interns,
17 residents and fellows on service, and these individuals who are
18 physicians, they are MDs or DOs. They also see the patients,
19 usually on rounds, in groups.

20 Q. Have you previously treated an individual with paraplegia?

21 A. Yes, I have.

22 Q. Approximately, how many times have you done it?

23 A. Well, seeing as they are not very common, I don't see them
24 tremendously often. But I do see maybe two, three or four a
25 year.

1 Q. And in what context do you typically see those paraplegic
2 patients?

3 A. Well, paraplegia in itself leads to problems with
4 infections. So it's not at all surprising that an infectious
5 specialist would be seeing a paraplegic, particularly a
6 hospitalized paraplegic.

7 Q. Have you reviewed Dave Kleiman's medical records?

8 A. Yes, I have.

9 Q. Do you recall approximately how many pages of medical
10 records you reviewed?

11 A. Well, I reviewed medical records from the VA system, most
12 of which were from his final hospitalization from September
13 2010 until March 2013. In all, there were -- it was in five
14 figures, so it was between 10 and 11,000 pages.

15 MR. KASS: Mr. Reed, could you please pull up
16 Defendant's Exhibit 91 and show it to Judge, counsel, and the
17 witness, but not the jury.

18 BY MR. KASS:

19 Q. Dr. MacIntyre, do you recognize the document in front of
20 you?

21 A. Yes, I do. Uh-huh.

22 Q. What do you recognize it to be?

23 A. It is a request for records to the Department of Veterans
24 Affairs.

25 MR. KASS: Mr. Reid, if you could just scroll down a

1 little bit to get past the letter.

2 Just scroll a few more pages.

3 There we go. That's perfect.

4 BY MR. KASS:

5 Q. And, Dr. MacIntyre, what do you recognize this document to
6 be, this portion of the document?

7 A. Well, this is a portion of the records during that
8 hospital -- that prolonged hospitalization that I was talking
9 about. This particular portion is a list of problems.

10 Q. Dr. MacIntyre, in your review of the medical records, did
11 you see any statements by Dave Kleiman?

12 A. Excuse me. Again?

13 Q. In your review of the medical records, were there any
14 statements made by Dave Kleiman in the records?

15 A. There are statements quoted by the nursing personnel that
16 they say he made.

17 Q. Okay. And were those statements or quotes in connection
18 with him obtaining medical treatment?

19 A. Well, they had to do with medical treatments usually.

20 MR. KASS: Your Honor, I'd like to introduce
21 Defendant's Exhibit 91 into evidence.

22 MR. BRENNER: No objection, Your Honor.

23 THE COURT: All right. Exhibit 91 is admitted into
24 evidence.

25 (Defendant's Exhibit 91 received into evidence.)

1 MR. KASS: Mr. Reed, would you be able to pull up
2 Defendant's Exhibit 92.

3 BY MR. KASS:

4 Q. Dr. MacIntyre, do you recognize this to be another one of
5 the medical records that you reviewed?

6 A. Yes. That is correct. It's from the same hospitalization.
7 These particular are consultations.

8 MR. KASS: Your Honor, I'd like to introduce
9 Defendant's Exhibit 092 into evidence.

10 MR. BRENNER: Your Honor, I believe these are broken
11 down into about 10 exhibits, the medical records. I'm not
12 going to have an objection to any of them.

13 MR. KASS: Your Honor, if it's all right, could I read
14 into the record the different exhibit numbers?

15 THE COURT: Certainly.

16 And, Mr. Brenner, let the Court know if there is any
17 objection to any of these exhibits.

18 MR. KASS: The additional exhibits would be
19 Defendant's Exhibit 93, Defendant's Exhibit 94, Defendant's
20 Exhibit 95, Defendant's Exhibit 96, Defendant's Exhibit 97,
21 Defendant's Exhibit 98, Defendant's Exhibit 99, Defendant's
22 Exhibit 100, Defendant's Exhibit 101, Defendant's Exhibit 102.

23 Your Honor, I'd like to move all those medical records
24 into evidence.

25 MR. BRENNER: No objection, Your Honor.

1 THE COURT: All right. Without objection, admitted
2 into evidence.

3 (Defendant's Exhibit 93 through 102 received into
4 evidence.)

5 MR. KASS: Mr. Reed, could you pull up Tab 16. Tab
6 16.

7 And, again, show it only to the witness, counsel, and
8 the Court.

9 BY MR. KASS:

10 Q. Dr. MacIntyre, do you recognize this document?

11 A. Yes, I do.

12 Q. What do you believe it to be or recognize it as?

13 A. This is a brief summary of the dates of the hospitalization
14 that I was talking about previously.

15 Q. And does the information in here accurately reflect what
16 you saw in the long medical records that were previously shown
17 to you?

18 A. That is correct.

19 MR. KASS: Your Honor, I'd like to introduce
20 Defendant's summary exhibit into evidence.

21 MR. BRENNER: Your Honor, I have no objection to this
22 as a demonstrative, but it's not evidence in and of itself.

23 THE COURT: Right. This is your exhibit that you're
24 using to assist Dr. MacIntyre with his testimony?

25 MR. KASS: Well, Your Honor, we actually would like to

1 introduce it substantively as a summary exhibit.

2 THE COURT: What exhibit number is it?

3 MR. KASS: Your Honor, I don't believe that summary
4 exhibits had to be listed on the exhibit list. We did share
5 this previously with opposing counsel.

6 THE COURT: For demonstrative purposes or an exhibit?

7 MR. KASS: As a summary exhibit.

8 THE COURT: All right. And, Mr. Brenner, your
9 objection is?

10 MR. BRENNER: I don't think it should go into
11 evidence. I have no problem with it being displayed to the
12 jury as a demonstrative.

13 THE COURT: Well, unless there's a reason to believe
14 that the information contained in this exhibit is not accurate,
15 then I would need this exhibit to be marked and the Court will
16 allow it into evidence.

17 MR. KASS: Your Honor, we will mark it as Defendant's
18 1000 -- we'll mark it as a 1020.

19 THE COURT: All right.

20 (Defendant's Exhibit 1020 received into evidence.)

21 MR. KASS: Could I have this exhibit published to the
22 jury?

23 THE COURT: You may.

24 BY MR. KASS:

25 Q. Dr. MacIntyre, could you read or explain what are the

1 high-level events going on in this summary exhibit to the jury.
2 A. Okay. The first entry there, which is dated September
3 24th, 2010, was the date of admission of Mr. Kleiman to
4 Miami -- to West Palm Beach VA hospital. He presented there
5 with sepsis and bacteremias related to the pressure ulcers that
6 he had prior to admission.

7 The next entry, September 28th, is -- and this is typical
8 for the VA system, that they will transfer internally, from one
9 VA hospital to another, in this case to the Miami VA Hospital,
10 for more specialized treatment that he required.

11 The final entry is when he was last seen at the Miami VA
12 Hospital. He left on a pass at that time.

13 Q. Between September 24th, 2010 and March 21st, 2013, was Dave
14 Kleiman discharged from the hospital for any period of time?

15 A. He was not discharged from the hospital. He did receive
16 passes, like I outlined before, temporary passes or furloughs.

17 MR. KASS: Mr. Reed, could you pull up Tab 16 -- 17.
18 I apologize. 17.

19 Not to the jury yet. We haven't introduced it.

20 BY MR. KASS:

21 Q. Dr. MacIntyre, do you recognize this document?

22 A. Yes, I do.

23 Q. And what do you recognize it to be?

24 A. This is a listing of the various furloughs or passes issued
25 to Mr. Kleiman while he was an inpatient during that prolonged

1 hospitalization.

2 Q. Is this an accurate reflection of the information contained
3 in Dave Kleiman's lengthy medical records?

4 A. Yes, it is. It corresponds to what I noted during my
5 review of the records.

6 MR. KASS: Your Honor, I'd like to introduce this
7 summary exhibit as Defendant's 1021.

8 MR. BRENNER: Can I see just the next three pages,
9 please.

10 MR. KASS: Oh, of course.

11 Mr. Reed, if you could scroll down.

12 MR. BRENNER: Give me one second.

13 Okay. Okay.

14 No objection, Your Honor.

15 THE COURT: Admitted into evidence.

16 (Defendant's Exhibit 1021 received into evidence.)

17 MR. KASS: Mr. Reed, if you could pull up the
18 Defendant's demonstrative exhibit, with respect to the stay in
19 the hospital.

20 BY MR. KASS:

21 Q. Dr. MacIntyre, do you recognize this demonstrative exhibit?

22 A. Yes, I do. I have seen it before.

23 Q. And what does it show?

24 A. Well, this particular -- what's up there now, shows his
25 time -- his days as an inpatient at the Miami Veterans

1 Administration Medical Center during the year 2010.

2 Q. What does the pinkish color reflect?

3 A. The days that he was an actual inpatient at the hospital.

4 Q. On the legend there's a little bit of a blue. What would
5 that reflect?

6 A. Well, the blue would be overnight passes. Now, during the
7 year that's up now, he did not have any.

8 MR. KASS: Mr. Reed, if you could move on to the next
9 stop in the slide.

10 BY MR. KASS:

11 Q. Dr. MacIntyre, what year was this added to this
12 demonstrative exhibit?

13 A. Well, the year 2011.

14 Q. Do you see that Dave Kleiman had any overnight passes or
15 extended day passes in 2011?

16 A. None that are indicated during that year.

17 Q. So does that mean throughout that entire year he was in the
18 hospital?

19 A. That is correct. The entire year.

20 MR. KASS: Mr. Reed, would you move on.

21 BY MR. KASS:

22 Q. Dr. MacIntyre, what year was just added to the
23 demonstrative exhibit?

24 A. The year 2012.

25 Q. In the year 2012, did Dave Kleiman have a number of

1 overnight passes or extended day passes?

2 A. That is correct.

3 Q. How many of those overnight passes or extended day passes
4 did he have in 2009?

5 A. There were two overnight passes. Actually, it would be one
6 pass over two days, in February 2012. In September, he was out
7 on pass seven days out of the month. In October, six days out
8 of the month. The November and December had no overnight
9 passes.

10 Q. Apart from those overnight or extended day passes, was Dave
11 Kleiman continuously in the hospital?

12 A. He was in the hospital as an inpatient all that time.

13 Q. Dr. MacIntyre, what year was just added to the
14 demonstrative exhibit?

15 A. The year 2013.

16 Q. And how many overnight or extended day passes did Dave
17 Kleiman have in the year of 2013?

18 A. Again, I'm going to have to amend what I was saying because
19 an overnight pass is actually indicated by two days here. So
20 he had one overnight pass in January, three of them in
21 February.

22 Q. And apart from those passes, was Dave continuously in the
23 hospital inpatient?

24 A. Well, he was up until March 21st, 2013.

25 Q. Okay. What happened on March 21st, 2013?

1 A. That's not indicated on this graphic. However, from my
2 review of the records, I found that he was issued an overnight
3 pass on that day and left the hospital. The records indicated
4 that the next day he called in and he received an extension for
5 one more day.

6 After that time, he did not contact the hospital nor return
7 to the hospital. The hospital personnel attempted to contact
8 him and were unsuccessful. Because of that, he was issued what
9 is called an irregular discharge.

10 MR. KASS: Mr. Reed, you could take down the
11 demonstrative -- sorry. If you could go back to that.

12 BY MR. KASS:

13 Q. Dr. MacIntyre, what does this demonstrative exhibit
14 reflect?

15 A. Well, it's a pie chart showing a comparison of the total
16 amount of time he spent as an inpatient during this
17 hospitalization, namely, two years, five months and two days,
18 and the number of days that he was out on pass overnight, which
19 was 23 days.

20 MR. KASS: Mr. Reed, you can take it down now.

21 BY MR. KASS:

22 Q. Dr. MacIntyre, I want to know if you could explain a little
23 bit more to the jury, what are day passes, overnight passes,
24 how long do they last, what's their purpose?

25 A. Well, as I mentioned previously in the description of a VA

1 hospital, when an individual is going to actually physically
2 leave the hospital, he has to be issued a pass, which is signed
3 off by one of the physicians, and the pass has to be for a
4 reason.

5 The pass indicates the time that he's expected to leave and
6 the time he's expected back. It can either be a day pass, when
7 he's only gone during one day, or an overnight pass, when he
8 leaves on one day and returns the next day.

9 Q. From your review of the records, is there an indication as
10 to why these passes were just for a day or a day and overnight?

11 A. That depends on what he was requesting, if he requested a
12 day pass or an overnight pass.

13 Q. Was there a medical reason from the records as to why he
14 wouldn't be able to take an extended pass to leave the
15 hospital?

16 A. In general, no, but one exception that he was granted some
17 passes, in order to supervise the installation of a piece of
18 equipment in his home, a lift in the shower. That could be
19 considered a medical reason. Other than that, his reasons were
20 non-medical.

21 Q. Was there anything that you saw in the medical records that
22 would prevent him from taking an extended stay out of the
23 hospital?

24 MR. BRENNER: Objection. Asked and answered.

25 THE COURT: Sustained.

1 BY MR. KASS:

2 Q. Do the medical records indicate Dave Kleiman's medical
3 condition?

4 A. Yes, they do.

5 Q. And what do they show about his medical condition?

6 A. Well, in general, he was seriously ill during that entire
7 time.

8 Q. Would that serious illness prevent him from leaving the
9 hospital for extended furloughs?

10 A. Yes, it would, because he required rather extensive care,
11 which he would not be receiving outside of the hospital for an
12 extended period of time.

13 Q. Could you describe at a high level the various medical
14 conditions that Dave Kleiman had.

15 A. Well, his basic underlying medical condition was
16 paraplegia. This was the result of a motor vehicle accident
17 several years prior to the admission that we're talking about.
18 But because of that, he had no use of the muscles from the
19 waist down and he had no sensation the waist down. Thus, he
20 was a paraplegic.

21 This condition carried a number of complications. The
22 major complications were pressure ulcers, which result from him
23 lying with a bony prominence over a hard surface, causing loss
24 of circulation to that area of the body, which leads to death
25 of the cells and eventual formation of a skin ulceration.

1 Those are sometimes call decubitus ulcers or bedsores. He had
2 a number of these before he came into the hospital in September
3 2010, and the care of these throughout the hospitalization was
4 most important.

5 Now, he also had infections relating to these bedsores.
6 Being an open sore, they become infected, and that frequently
7 leads to infection of the underlying bone, which is called
8 osteomyelitis, which requires extended antibiotic treatment and
9 frequently surgical management.

10 Now, he also had loss of control of the bladder sphincter,
11 meaning he could not urinate normally. Because of that he had
12 to have catheterizations of the bladder; either a chronic Foley
13 catheter was left in place or intermittent catheterizations in
14 and out in order to empty the bladder. This, in turn, can lead
15 to infections, bladder infections, kidney infections, and they
16 can also escape into the bloodstream relating to this problem.

17 Then, finally, he had loss of control of the anal
18 sphincter, meaning that defecation was not through the normal
19 route. He would require stimulation or it would occur
20 spontaneously without control. And this, of course, can lead
21 to contamination of the pressure ulcers. I think that should
22 be rather obvious.

23 Q. Dr. MacIntyre, what was the condition of Dave's bones?

24 A. The bones in the area of paraplegia -- and that is from the
25 waist down -- were not subjected to weight bearing and not

1 subjected to general use. Bones that are not subjected to
2 weight bearing or general use lose calcium and become brittle,
3 easily fractured. He had one fracture of his femur, which
4 occurred just during physical therapy.

5 MR. KASS: Your Honor, this would be a good place to
6 stop on my end, if that's okay with the Court.

7 THE COURT: All right. Certainly.

8 All right. Ladies and Gentlemen, we will adjourn for
9 the evening. I will see you tomorrow morning at 9:45. If
10 you'll make your way into the jury room.

11 Please remember, you're not to discuss the case with
12 anyone, nor permit anyone to speak with you. Everything
13 learned about the case is learned within the courtroom. You're
14 not to conduct any independent research.

15 Have a pleasant evening. I'll see you tomorrow
16 morning.

17 (Jury not present, 4:59 p.m.)

18 THE COURT: Dr. MacIntyre, we'll see you tomorrow
19 morning, sir.

20 All right. Is there anything further that we need to
21 address this evening on behalf of the Plaintiffs?

22 MR. FREEDMAN: Your Honor, one thing.

23 THE COURT: Go ahead and have a seat.

24 Thank you, Dr. MacIntyre. We'll see you tomorrow
25 morning.

1 Dr. MacIntyre, you're free to go, sir. Thank you.
2 We'll see you tomorrow morning.

3 (Pause in proceedings.)

4 THE COURT: Mr. Freedman.

5 MR. FREEDMAN: Your Honor, never mind. Apologize.
6 We're all set.

7 THE COURT: Is there anything to address on behalf of
8 the Plaintiffs?

9 MR. FREEDMAN: No, Your Honor.

10 THE COURT: Is there anything to address on behalf of
11 the Defendant?

12 MS. McGOVERN: Just one quick thing, Your Honor. I
13 was speaking earlier today -- we're going to be taking
14 probably -- just to make sure we don't have any gaps, we're
15 going to be taking Mr. Kuharcik tomorrow afternoon, not Friday
16 morning. To just be ready with that for the Zoom.

17 One question that came up is: What happens with
18 exhibits that are not admitted already, if they were to come in
19 through Mr. Kuharcik? If it's by Zoom, I don't know if the
20 Court has a procedure in that regard so that the jury doesn't
21 see the exhibit before it's admitted. But I can send the
22 exhibits to Mr. Kuharcik in advance. Whatever you prefer.

23 THE COURT: Well, obviously, he would need to have the
24 exhibits in hand to review, and I would suggest that an
25 instruction be given -- because the jury is going to be

1 watching this witness -- that he is not to display the exhibit
2 until you lay the necessary foundation.

3 Now, to the extent that the parties can come to an
4 agreement on the admissibility of these documents, then perhaps
5 that cures any issue.

6 MS. MCGOVERN: Perfect. Thank you, Your Honor.

7 THE COURT: Okay. All right. So I believe that Liz
8 has already sent you the Zoom link. So now you have pretty
9 much control to just let him know, and obviously let the Court
10 know, when it's time for the witness. But will we have any
11 other gaps in time?

12 MS. MCGOVERN: No.

13 THE COURT: All right. So we'll finish with
14 Dr. MacIntyre, and then who will be the next witness?

15 MS. MCGOVERN: Kimon Andreou and then Carter Conrad
16 and then Mr. Kuharcik.

17 THE COURT: Do you believe that that will take us
18 through the day?

19 MS. MCGOVERN: I do. And in fact, if it doesn't,
20 there's a video clip that we'll play.

21 THE COURT: All right, then.

22 Okay. If there's nothing further, have a pleasant
23 evening. Take your time, but I do wish to remind you that
24 we're going to be using the counsel table tomorrow morning.

25 Have a nice evening.

(Proceedings adjourned at 5:02 p.m.)

1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at
8 and reported in machine shorthand the proceedings had the 17th
9 day of November, 2021, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 148.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida this 27th day of November, 2021.

16
17 /s/Yvette Hernandez
18 Yvette Hernandez, CSR, RPR, CLR, CRR, RMR
19 400 North Miami Avenue, 10-2
20 Miami, Florida 33128
21 (305) 523-5698
22 yvette_hernandez@flsd.uscourts.gov
23
24
25

COURT SECURITY**OFFICER: [2]** 39/3
118/20**COURTROOM DEPUTY:**
[4] 81/22 81/25
125/19 126/10**MR. BRENNER: [8]**
132/22 133/10
133/25 134/21
135/10 137/8
137/12 141/24**MR. FERNANDEZ:**
[26] 80/14 80/20
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123/1**MR. FREEDMAN: [97]**
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145/5 145/9**MR. KASS: [96]**
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140/20 144/5**MR. RIVERO: [8]**
66/12 78/13 118/11
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124/6 126/19 130/4**MR. ROCHE: [15]**
103/11 106/20
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121/5 121/21 123/3**MS. MCGOVERN: [30]**
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146/19**THE COURT: [201]**
THE WITNESS: [31]
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848 (AM)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:18-cv-80176-BB

IRA KLEIMAN, as the personal representative
of the Estate of David Kleiman, and W&K Info
Defense Research, LLC,

Plaintiffs,

November 18, 2021
9:59 a.m.

vs.

CRAIG WRIGHT,

Defendant.

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TRANSCRIPT OF TRIAL DAY 12, AM SESSION
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 10

Appearances:

FOR THE PLAINTIFF: ROCHE FREEDMAN, LLP
DEVIN FREEDMAN, ESQ.
KYLE ROCHE, ESQ.
200 South Biscayne, Suite 5500
Miami, Florida 33131

BOIES SCHILLER & FLEXNER
ANDREW BRENNER, ESQ.
STEPHEN N. ZACK, ESQ.
ALEXANDER HOLTZMAN, ESQ.
100 Southeast 2nd Street, Suite 2800
Miami, Florida 33131

FOR THE DEFENDANT: RIVERO MESTRE, LLP
ANDRES RIVERO, ESQ.
JORGE MESTRE, ESQ.
AMANDA M. MCGOVERN, ESQ.
ZALMAN KASS, ESQ.
2525 Ponce de Leon Boulevard, Suite 1000
Coral Gables, Florida 33134

COURT REPORTER: Yvette Hernandez
U.S. District Court
400 North Miami Avenue, Room 10-2
Miami, Florida 33128
yvette_hernandez@flsd.uscourts.gov

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ON BEHALF OF THE DEFENDANT:

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1 (Call to order of the Court, 9:59 a.m.)

2 THE COURT: All right. Good morning to everyone.

3 How is everyone this morning?

4 MR. BRENNER: Good.

5 THE COURT: All right. Go ahead and have a seat.

6 Let's call the case and make sure we know who's here this
7 morning.

8 And is Dr. MacIntyre with us?

9 All right. Come on forward, sir.

10 COURTROOM DEPUTY: Calling Civil Case Number 18-80176,
11 Ira Kleiman v. Dr. Craig Wright.

12 Counsel, please state your appearances for the record,
13 starting with Plaintiffs' counsel.

14 MR. BRENNER: Good morning, Your Honor. Andrew
15 Brenner on behalf of the Plaintiffs.

16 MR. HOLTZMAN: Good morning, Your Honor. Alexander
17 Holtzman on behalf of the Plaintiffs.

18 MR. FREEDMAN: Good morning, Your Honor. Vel Freedman
19 on behalf of Plaintiffs.

20 MR. ROCHE: Good morning, Your Honor. Kyle Roche on
21 behalf of Plaintiffs.

22 MR. ZACK: Good morning, Your Honor. Steve Zack on
23 behalf of Plaintiff.

24 THE COURT: Good morning.

25 MR. FREEDMAN: And with us at counsel table is Ms.

1 Vela and Ira Kleiman.

2 THE COURT: Good morning to each of you.

3 MR. RIVERO: Good morning, Judge. Andres Rivero. And
4 before my fellow counsel introduce themselves, I would just say
5 that Dr. Wright is with us, our crack paralegal, Sarah
6 Gonzalez, and Mr. Reed as a hot seat.

7 MS. McGOVERN: Good morning, Your Honor. Amanda
8 McGovern for Dr. Wright.

9 MR. KASS: Good morning, Your Honor. Zalman Kass on
10 behalf of Dr. Wright.

11 MR. MESTRE: Jorge Mestre for Dr. Wright.
12 Good morning, Judge.

13 THE COURT: Good morning to each of you.

14 So is Mr. Reed handling the IT for Mr. Shah?

15 MR. RIVERO: Yes, Judge. Mr. Shah went home for the
16 holidays, Judge.

17 THE COURT: All right. Well, let me state that it
18 certainly has been a pleasure, both with Ms. Vela and Mr. Shah,
19 and I have no doubt with Mr. Reed -- that the presentation to
20 the jury of the exhibits has been exceptional.

21 MR. RIVERO: Judge, I appreciate you saying it and
22 became very fond of Mr. Shah and I will relay that to him.

23 THE COURT: All right. Are there any matters that we
24 need to address -- all the jurors are present -- before we
25 proceed?

1 MR. BRENNER: Your Honor, just one quick matter. We
2 are endeavoring and will meet Your Honor's deadline for filing
3 the JMOL response. We're finding that we may need some extra
4 pages. Would it be okay -- we think it's going to end up being
5 around 30, instead of 20. Is that okay?

6 THE COURT: That's exceptional, yes -- I mean,
7 acceptable to the Court and I'll allow it. Not exceptional --

8 MR. BRENNER: I hope it's exceptional too.

9 THE COURT: I don't know. I haven't read it yet.

10 It's acceptable to the Court. And is the deadline --
11 I know that I said by the end of today. I want to give you
12 through the evening, but I would like to have the response so
13 that I can work on it tomorrow in the afternoon after we
14 conclude and the weekend.

15 MR. BRENNER: Sure. If it's okay with Your Honor, if
16 we could -- it would give us a chance, the three of us in
17 court, to review it tonight after court. And if we could get
18 it to you by the -- that you will have it when you look in the
19 morning. Is that fine?

20 THE COURT: Yeah. I think I said the end of business,
21 I think, before midnight. I mean --

22 MR. BRENNER: End of our business day.

23 THE COURT: Yes. Yes. Thank you.

24 Okay. Any other issues we need to address?

25 MR. BRENNER: Nothing for the Plaintiffs.

1 THE COURT: Okay. And good morning to Dr. MacIntyre.
2 Let's bring in the jury.

3 (Before the Jury, 10:02 a.m.)

4 THE COURT: Good morning, Ladies and Gentlemen.
5 Please be seated.

6 As each day passes, I become more impressed with your
7 promptness. And you have certainly been paying close attention
8 to the testimony. So I do appreciate your service to the Court
9 and to the parties and to our system of justice.

10 Dr. MacIntyre, let me remind you, you were previously
11 placed under oath yesterday. And we'll continue with the
12 questioning.

13 DIRECT EXAMINATION [CONTINUED]

14 BY MR. KASS:

15 Q. Good morning, Dr. MacIntyre.

16 A. Good morning.

17 Q. I would like to pick up from where we left off yesterday.
18 And I believe at the end of the day you had told the jury about
19 the various medical conditions that David Kleiman had. Do you
20 recall that?

21 A. Yes, I do.

22 Q. And do you recall at the end talking about the condition of
23 David Kleiman's bones?

24 A. Yes.

25 Q. What was the condition of his bones?

1 A. Well, best described as brittle from the waist down because
2 of immobility and lack of muscle control. And with the lack of
3 weight-bearing, bones would lose their calcium and become more
4 likely to fracture.

5 Q. Did Dave Kleiman have to have any procedures because of the
6 condition of his bones?

7 A. Well, he had to have procedures because of two problems
8 relating to bones. The one we're talking about, the brittle
9 bones, he had a fracture of his left femur that was almost
10 spontaneous. It occurred during physical therapy and it just
11 broke, and that had to be dealt with.

12 He also had various procedures because of infections of the
13 bone and joints relating to his pressure ulcers.

14 Q. Do you know, in total, how many different operational
15 procedures Dave Kleiman had?

16 A. Well, I counted seven formal operations on him. Now, in
17 addition to that, he would have had bedside debriding and so
18 forth for the pressure ulcers.

19 Q. After those surgeries -- do the records reflect whether
20 Dave Kleiman had any sort of downtime after the surgeries?

21 A. Well, each surgery, of course, requires anesthesia and
22 there is a downtime after that anesthesia during recovery and
23 for some time until all of the anesthetic medications have worn
24 off.

25 He also would require pain medications relating to that.

1 Now, obviously, he's not getting pain from below the waist
2 because he's anesthetic there, but he does have pain elsewhere
3 relating to the surgery.

4 Q. I want to go back to something that you mentioned
5 yesterday. And I believe it was that Dave Kleiman had pressure
6 ulcers.

7 A. That is correct.

8 Q. Could you tell the jury where the pressure ulcers were
9 located?

10 A. Well, pressure ulcers are generally located over bony
11 prominences where the bone is against the surface. The patient
12 is either lying or sitting on a surface causing the loss of
13 circulation in the area.

14 In his case, he had pressure ulcers over the ischial
15 prominences, which, I think I mentioned yesterday, are the
16 bones that you sit on, which is related to sitting down, and
17 also over the sacrum, which is the lower back, from lying down.
18 He also had some pressure ulcers on the feet.

19 Q. Do the records indicate what sort of treatment Dave Kleiman
20 was receiving for those pressure ulcers?

21 A. Well, he received operative procedures that I already
22 mentioned. These included debridement, which is removing dead
23 tissue, in essence, and cleaning up the ulcer so that it's more
24 likely to heal.

25 He also received bedside debridements which are not formal

1 operations, do not require anesthetic, but do require the wound
2 care people to work on the wound.

3 And then, in addition to that, he had a number of
4 procedures relating to the infections. He had a -- he had
5 actually two procedures on the hip. The first one was an
6 attempt to remove the hip joint entirely, which, of course, you
7 can do because he was paralyzed. He didn't need it. This
8 procedure had to be stopped because of excessive bleeding and
9 also because they encountered an abscess in one of the bones.
10 And then there was a second procedure to treat that abscess,
11 which completed the first procedure.

12 He also had a similar procedure on his knee because of an
13 infection there.

14 Q. Do the records indicate whether David Kleiman was supposed
15 to be in a certain position due to his pressure ulcers?

16 A. Yes, they do. That specifically he had to avoid lying on
17 his back for any length of time. That doesn't mean he couldn't
18 lie on his back some time, but he had to -- and we use the term
19 "offload" for this -- to take the gravity pressure off the back
20 periodically. In addition to this, he had to avoid sitting
21 down; same reasoning.

22 Now, the nursing service had standing orders to turn him
23 every two hours so that he wouldn't be lying on his back. He'd
24 be turned to one side. And he couldn't be left that way very
25 long either or he'd develop a pressure ulcer over his hip. So

1 he had to be turned to the other side, or to his belly. And
2 this was -- the standing orders were to turn every two hours.

3 Now, likewise, he was not supposed to sit down over two
4 hours. And he was instructed -- and physical therapy would
5 help him in learning how to shift his weight in a wheelchair to
6 try to offload at least one side or the other while he was
7 sitting in the wheelchair.

8 Now, the standing orders to turn the patient, those are
9 frequent in patients that are immobilized for some reason or
10 another. And I always remember I went to a hospital once where
11 every two hours, a popular song that was popular back in the
12 '70s -- dah, dah, dah, dah, dah, turn, turn, turn, dah, dah,
13 dah, dah, turn, turn, turn, turn. I think some of the older
14 people like myself probably remember that song. And that was
15 played over the PA every two hours to remind the nursing staff
16 to turn the patients.

17 Q. Did David suffer from any type of bacterial infections?

18 A. Most definitely.

19 Q. Could you tell the jury a little bit more about those
20 infections?

21 A. Well, basically he had two chronic bacterial infections.
22 One was a chronic urinary tract infection which was present
23 throughout the hospitalization and had been present before.
24 This is related to having to have artificial drainage of the
25 bladder, a tube in there. Either a continuous tube -- or a

1 Foley catheter, or intermittent catheterization, putting it in
2 and out.

3 All of these things lead to infection in the bladder,
4 which, in turn, can lead to infection in the kidneys and escape
5 of bacteria into the bloodstream, which is called bacteremia.
6 So that was one infection. It was chronically there with
7 superimposed acute episodes of infection with -- and at least
8 three times bacteremia.

9 The other chronic infection, or infections, were bone
10 infections relating to these pressure ulcers. Bacteria, of
11 course, gain access directly to the bone through the ulcer and
12 infect the bone. And an infection in the bone is very hard to
13 treat because the bacteria become attached to the bone itself,
14 to the spicules of bone. It's something called a biofilm.
15 That the bacteria excrete filmy material which protects them
16 and it makes it difficult for the antibiotics to get to the
17 bacteria. They're protected by this biofilm.

18 So the bony infection, which is -- osteomyelitis is the
19 term used for it, requires long-term antibiotics and surgical
20 management frequently.

21 Q. Dr. MacIntyre, do David's medical records reflect whether
22 he was prescribed medications?

23 A. Well, yes. He was prescribed many medications.

24 Q. Can you identify some of the medications that you observed
25 reviewing the medical records?

1 A. Well, first, obviously, my field is infectious disease, so
2 I'm most interested in the antibiotic medications that he was
3 prescribed. He was prescribed multiple long-term antibiotics.

4 Now, one of the problems in his case, and in many other
5 cases, are that when antibiotics have to be prescribed or given
6 for long periods of time, the bacteria can develop resistance
7 to them. And he had infection with resistant bacteria. One of
8 them is staphylococcus aureus methicillin-resistant, frequently
9 known as M-R-S-A, or MRSA, and I think most of us have heard of
10 that at one time or another.

11 He also had bacteria normally found in the gut that had
12 become resistant to antibiotics. It's called extended-spectrum
13 beta-lactamase bacteria. Beta-lactamase are enzymes produced
14 by the bacteria that break down antibiotics. So this ESBL,
15 extended spectrum beta-lactamase bacteria, were also affecting
16 him. And these require longer-term and different antibiotics
17 than he would normally use.

18 So he received multiple different antibiotics, given
19 intravenously frequently, given by mouth, and also applied
20 topically to the ulcers. So that's one group of medications
21 that he received.

22 Now, he also received medications because of the
23 possibility of pain or muscle spasm relating to his paraplegia.
24 The interruption of the innervation to the lower part of the
25 body doesn't necessarily eliminate all pain, although it

1 reduces it and makes it anesthetic frequently.

2 So he received pain medications specifically related to the
3 surgeries that he had. And these included Percocet, which is a
4 well-known pain medication given by mouth, and fentanyl, which
5 is, of course, rather notorious now. It's given by vein
6 usually when it's given medically.

7 He also was receiving a medication called Diazepam, which
8 is -- the trade name for that is Valium. It's a tranquilizer
9 and depressive medication. In his case, it was used
10 chronically to reduce muscle spasms.

11 Now, when there's innervation of an area of the body, the
12 muscles will become spastic because of the nerve circuits that
13 are cut loose from central control by the denervation, so
14 spasms occur. And these can be painful. And they can
15 interfere with his moving around and interfere with his
16 physical therapy.

17 So he received Valium. And the order was Valium given
18 every six hours by mouth. And that order was in place
19 throughout his hospitalization. So that group of medications
20 are another one.

21 Now, he also received other medications for various other
22 things, like blood pressure and so forth.

23 Q. Based on your experience, do any of those medications that
24 you just listed have the ability to alter one's mental state?

25 A. Well, the pain medications, I think it's pretty evident, do

1 that. Valium, its effects are very similar to the effects of
2 alcohol, and as such, are depressant. They interfere with
3 control of impulses. And in fact, Valium is used sometimes to
4 treat withdrawal from alcohol.

5 An alcoholic who has to go cold turkey for some reason or
6 another, a way to protect him from withdrawal symptoms are to
7 give a reducing dose of Valium over time. That's one way to
8 treat alcohol withdrawal.

9 Q. I want to know if you could expand a little bit on how the
10 intravenous medication was administered to Dave, like what were
11 the mechanics of it.

12 A. Well, in his case, he received intravenous medications by
13 two mechanisms. One is by a peripheral intravenous line.
14 These are IVs where the needle is placed in a vein in the
15 forearm, sometimes in the ante-cubital space there, or in the
16 hand or wrist.

17 This is attached, of course, to a tube that goes to the
18 bag. It contains the antibiotic or the other medications that
19 he's receiving, including the fentanyl that I mentioned before.
20 So in a peripheral intravenous line is one way and he received
21 that at various times.

22 Also, during a large part of this hospitalization, he was
23 attached to a central intravenous line. And in his case, these
24 were what they call a PICC, a peripherally inserted central
25 catheter, P-I-C-C. And these are placed in the upper arm

1 either side and are left in place for long periods of time.

2 And these, in turn, again, are attached to the tube that goes
3 to the bag of the medication.

4 Q. Did those intravenous lines have any effect on Dave
5 Kleiman's mobility?

6 A. Well, obviously, the peripheral lines interfere with the
7 mobility of the arm where they're placed. They're there, you
8 move around, they can move around. They might actually fall
9 out. It can be painful to move them around. So they are
10 quite -- they basically immobilize that arm.

11 The central lines are less troublesome, but they also lead
12 to a certain degree of immobility because one is attached to a
13 tube that goes to the bag of medication that has to be hanging
14 somewhere. Normally, it's hanging on a pole which is moved
15 around with a patient.

16 Sometimes, if the patient is in a wheelchair, they can be
17 attached to a pole on the wheelchair. But as such, the
18 presence of this tube can interfere with mobility. I think
19 that could be perfectly obvious thinking of it, or if anyone
20 has actually ever been in the hospital and had one placed.

21 Q. Was David prescribed any medications that had the
22 possibility of psychotic effects?

23 A. Well, as I mentioned, the pain medications and the Valium
24 can, as a side effect, lead to mental status changes, including
25 psychotic or at least psychotic-appearing effects. Those

1 medications reduce the impulse control. They essentially
2 disconnect the frontal lobe from various centers in the center
3 part of the brain. So that can happen.

4 Also, antibiotics, not really causing psychotic -- that's a
5 rather strong term for it -- but a depressive effect in general
6 can occur with antibiotics. It's not very severe, and usually
7 is noted only when the antibiotics are discontinued.

8 And I've seen patients note this to me on multiple
9 occasions. They have been on antibiotics for a period of time.
10 We stop the antibiotic, and the next day the patient comes to
11 me and says: "I feel so much better being off those
12 antibiotics," an effect that wasn't evident, but then when you
13 stop it, it was evident that it was occurring.

14 MR. BRENNER: Your Honor, just pose an objection to
15 Dr. MacIntyre talking about what other patients may say or not
16 and focus on Mr. Kleiman's records.

17 THE COURT: Sustained. The objection is sustained.

18 BY MR. KASS:

19 Q. Dr. MacIntyre, from reviewing Dave Kleiman's medical
20 records, did you see anything that could have affected his
21 ability to do continuous work while in the hospital?

22 A. Well, first, the presence of intravenous lines. We've
23 already gone over that.

24 Secondly, the depressive effects of medications,
25 particularly the Valium.

1 And third, it's not a medication, but the fact that he was
2 in the hospital and being interrupted all the time for various
3 treatments and visits by physicians and so forth, interrupt any
4 train of thought that might be going on.

5 Q. Could you tell the jury a little bit more about what type
6 of physician interruptions you saw in the medical records.

7 MR. BRENNER: Your Honor, I'm having trouble hearing
8 Mr. Kass when he backs away from the microphone.

9 THE WITNESS: Are you not hearing me well?

10 THE COURT: Do you want to restate the question for
11 Mr. Brenner?

12 MR. KASS: Madam court reporter, could you repeat it?

13 (Read back.)

14 MR. BRENNER: Thank you.

15 THE WITNESS: Okay. The medical record reflects the
16 orders given to the nurses for various interruptions. They
17 also reflect the notes that various -- I'm sorry. This thing
18 has a hood on it, so it's hard to tell. It's protected.

19 There are the notes from the physicians indicating
20 when they saw the patient as well. And, of course, notes from
21 other therapists, the nursing staff I mentioned already,
22 physical therapists, occupational therapists. He was receiving
23 recreational therapy. He would be visited sometimes by the
24 spiritual therapy patient -- or individuals. So he was being
25 seen frequently by people, and that's reflected in the record.

1 I think anybody that's been in a hospital for any time knows
2 what I'm talking about.

3 BY MR. KASS:

4 Q. Was David treated by different specialty doctors?

5 A. Yes, he was. He had a number of different problems going
6 on, that were handled by different specialties. One of them,
7 of course, infectious disease. He was being seen by infectious
8 disease specialists. In fact, one of the specialists that saw
9 him I know personally because he was at the same VA where I
10 was. He was also seen by the surgeons, obviously. And he was
11 seen by multiple other specialties, all of which are reflected
12 in the record.

13 Now, he, of course, was in the Miami Veterans
14 Administration Hospital. That's a teaching hospital. And each
15 specialty group has interns, residents, and fellows associated
16 with them that go around in the group and also see the patient
17 individually, and this is all reflected in the record.

18 Q. How often did David receive wound care?

19 A. Generally, he would receive wound care daily, sometimes
20 three times a week. Now, there were some times when he would
21 refuse wound care for various reasons, but he received it most
22 of the time.

23 Q. Did you see any records reflecting David using his computer
24 while in the hospital?

25 A. It was noted by the nursing staff on multiple occasions

1 that he was using his computer. That is correct.

2 Q. Did the nurses make any records what they observed David
3 doing on his computer?

4 A. They only record what he said he was doing on the computer,
5 which he referred to as "work."

6 They do say that they observed him seeing movies on the
7 computer on a couple of occasions.

8 Q. Now I want to move on to the circumstances surrounding Dave
9 Kleiman's -- when he left the hospital. Could you tell the
10 jury a little bit more about what happened that Dave was no
11 longer in the hospital at the end of March.

12 A. Well, I think we discussed yesterday the concept of a
13 furlough or a leave of absence from the hospital. That it's a
14 little bit like a leave of absence in the military. That it
15 has to be specifically ordered and for a reason and with a time
16 to leave and a time to return.

17 And in March 2013, he was given a leave of absence to leave
18 the hospital. The reason given was to supervise the
19 installation of a lift facility in his bathroom, I think in the
20 shower. That he was having a piece of equipment installed, and
21 he was to supervise that. That was the reason for the leave of
22 absence.

23 And initially, the return time was the day after he left.
24 Well, the day after he left, the record reflects that he called
25 in and asked for an extension of the leave for another day,

1 which was granted.

2 The following day, he did not call in and the staff at the
3 hospital attempted to contact him and noted in the record that
4 they could not contact him. And this went on for a period of
5 time. I don't remember exactly how many days they kept trying
6 to do it, until they finally officially considered him
7 discharged from the hospital, which is called an irregular
8 discharge.

9 And there's no more medical record from the hospital staff
10 on what happened to him.

11 Q. Prior to Dave being -- well, considered AWOL from the
12 hospital, do the medical records reflect whether his medical
13 condition was -- whether he was sufficiently well to leave the
14 hospital for an extended period of time?

15 A. Long-term discharge plans were being worked on. But at the
16 time that he left, he was not considered ready for discharge.

17 MR. KASS: Your Honor, if you could just give me one
18 moment.

19 THE COURT: Yes. Of course.

20 (Pause in proceedings.)

21 BY MR. KASS:

22 Q. Dr. MacIntyre, I believe you just testified that Dave
23 wasn't ready for discharge from the hospital when he left in
24 March of 2013. Could you explain to the jury why he wasn't
25 ready to be discharged.

1 A. Because he was requiring multiple treatments: physical
2 therapy, occupational therapy, medications, including
3 intravenous medications. And arrangements had not been made
4 for any of that to be given as an outpatient.

5 Q. Were his pressure ulcers still there?

6 A. Most definitely so. Now, they were improved, but there
7 were still open pressure ulcers requiring care, wound care.

8 MR. KASS: That's it, Your Honor.

9 THE COURT: All right. Thank you, sir.

10 Cross-examination.

11 MR. BRENNER: Can I have one moment, Your Honor?

12 THE COURT: Yes. Of course.

13 (Pause in proceedings.)

14 MR. BRENNER: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. BRENNER:

17 Q. Good morning, Dr. MacIntyre. How are you?

18 A. Good morning. Hanging in there.

19 Q. I'm sorry?

20 A. Hanging in there.

21 Q. Hanging in there. Okay. Beats the alternative, right?

22 You remember we met on a couple of occasions, right?

23 A. That is correct.

24 Q. Okay. I took your deposition in January of 2020, I think.

25 Does that sound right?

1 A. I believe it was 2020. It might have been 2019. I'd have
2 to look at the date of it.

3 Q. Okay. And then again, the second one, we did during Zoom.
4 Do you remember that?

5 A. Yes, I do.

6 Q. So we met in person once and the other over the computer
7 technology, right?

8 A. Yes.

9 Q. So let's get a couple things clear. You are an infectious
10 disease doctor, correct?

11 A. That is correct.

12 Q. In reaching your opinions that you've expressed here today,
13 you never spoke with any of Dave Kleiman's treating physicians
14 about him, correct?

15 A. That is also correct.

16 Q. You never talked with any of his friends about him,
17 correct?

18 A. That is also correct.

19 Q. And you never spoke with any of his business colleagues
20 about him, correct?

21 A. No, I haven't.

22 Q. Now, at the beginning of your examination, Mr. Kass moved
23 in a set of exhibits that -- those were the medical records
24 that you were provided for Dave Kleiman, right?

25 A. Most of them were medical records and some of them were

1 exhibits that were abstracted from the medical records.

2 Q. Putting aside the demonstratives, the things that you
3 summarized. But the evidence itself, the medical records, you
4 reviewed what you were given regarding Dave Kleiman, correct?

5 A. That is correct.

6 Q. And those records is what you base most of your opinions on
7 today, correct?

8 A. That is also correct.

9 Q. And those opinions -- those records start in 2010. I think
10 it's September. Am I right about that?

11 A. The hospitalization of -- in question started in September
12 2010. I did have some VA records that went back into around
13 1995 as well.

14 Q. Right. What you were talking about today was what was
15 going on in Dave's final hospitalization between 2010 and 2013,
16 right?

17 A. That is correct.

18 Q. Okay. Now, you're not offering any opinion whatsoever
19 regarding Dave Kleiman's ability to do complex tasks or
20 computations prior to September 2010; is that correct?

21 A. That is correct.

22 Q. And you also have no information about Mr. Kleiman's mental
23 ability before 2010, correct?

24 A. In general, correct. There were some references to mental
25 ability in the records that I saw previous to 2010, but the

1 opinions now are not based on those.

2 Q. Well, let me just go to your April deposition. And we're
3 going to go to Page 54, lines 6 to 15.

4 (Pause in proceedings.)

5 MR. BRENNER: May I proceed, Your Honor?

6 THE COURT: Yes, you may.

7 BY MR. BRENNER:

8 Q. So you sat for deposition in April of 2020, correct?

9 A. That's correct.

10 Q. And you took the same oath there that you took today,
11 correct?

12 A. That's correct.

13 Q. And let me just read for you the questions I asked you and
14 the answers you gave then.

15 Question: "Anything -- anything about his mental
16 ability -- his mental ability before 2010, correct?"

17 Your answer: "I have no information on that."

18 Question: "Well, if you have no information, it's correct
19 you don't have an opinion on his mental ability prior to 2010;
20 is that correct?"

21 And your answer was: "I have no information."

22 Those were the questions and answers you gave in 2010 --
23 I'm sorry -- April 2020?

24 A. Well, that is what I remember, yes.

25 Q. Okay. Great.

1 You also have no information about Dave's ability to work
2 before 2010, correct?

3 A. That is correct.

4 Q. And you have no information about Dave's ability to write
5 computer code before 2010?

6 A. No. At the time of the deposition, that is correct.

7 Q. Are you suggesting that you have gone back and done
8 additional work since the deposition?

9 A. I'm suggesting that --

10 Q. That's a yes or no. Have you, sir?

11 A. Depends on your definition of work.

12 Q. Have you reviewed additional materials since your
13 deposition?

14 A. I looked back at the records that I had, which were
15 cursory, not very much, from prior to 2010, and noted there
16 were some comments in there about mental status --

17 MR. KASS: Your Honor?

18 THE WITNESS: -- and I did not remember that at the
19 time of the deposition.

20 MR. KASS: Objection.

21 THE COURT: Dr. MacIntyre, you may finish your answer.

22 THE WITNESS: And I'm supposed to be telling the
23 truth. And now I can remember there were some references to
24 that that I didn't remember at the time of the deposition.

25

1 BY MR. BRENNER:

2 Q. And did you tell those to your -- to counsel for Dr. Wright
3 before you came today?

4 MR. KASS: Your Honor, calls for privileged
5 communications.

6 THE COURT: Overruled.

7 BY MR. BRENNER:

8 Q. Did you, sir?

9 A. No.

10 Q. Okay. So we're going to go through and actually show a lot
11 of the medical records. A lot of questions you were asked on
12 direct examination were: "Could this be this," and: "Could
13 this be that." You would agree with me it may make sense to
14 look at the actual medical records, right? Those are the best
15 evidence of what was going on?

16 A. In general, yes.

17 Q. Okay. Great.

18 You know that while Mr. Kleiman was in the hospital, that
19 his doctors actually ran assessments of his mental capacity.
20 Do you know that, sir?

21 A. That's correct. There were psychology notes on several
22 occasions.

23 Q. Well, that's not it, sir? Is there --

24 A. Well, psychology, that's the field that assesses this type
25 of thing.

1 Q. Okay.

2 A. And there are such notes in the record.

3 Q. Do you know that he was given something called a Folstein
4 Mini-Mental State Exam? Do you remember that?

5 A. I don't remember that specifically, but that probably
6 appears in the psychology notes.

7 Q. Okay. So when you were going through your work in this
8 case, did you understand that the issue in this case, or one of
9 the issues in this case, was Dave's mental ability while he was
10 in the hospital? Did you have that understanding?

11 A. I have been told that, yes.

12 Q. Okay. And so when you went through the records, you
13 yourself didn't find any such specific test done on his mental
14 state, did you?

15 A. I did not look for that. I was looking for infectious
16 disease-related problems.

17 Q. Right. You're an infectious disease doctor. You're not a
18 doctor that has any -- it's not your job to look at mental
19 issues and mental capacity?

20 A. That is correct.

21 MR. BRENNER: So let's bring up, Ms. Vela, if we
22 could, D -- Your Honor, these are all in evidence. These will
23 all be from the medical records.

24 If we could publish for the jury D91 at Page 920.

25

1 BY MR. BRENNER:

2 Q. Okay. So this is a Folstein Mini-Mental Exam. You don't
3 remember seeing this in the records, right?

4 A. Not specifically, no. I would have gone through it because
5 it's in the records, but I don't specifically remember that.

6 Q. Right. Because it wasn't your focus, right?

7 A. That's correct.

8 Q. Okay. Great.

9 So you see on this -- this is a mental state exam. Do you
10 see that Dave got a 30 out of 30?

11 A. It says something called: "Total score, 30 over 30."

12 Q. Right. That's 30 out of 30, isn't it, sir?

13 A. Well, 30/30.

14 Q. Okay. Let's go through it. Do you not read that as, on
15 "Orientation," you could get 10 possible points and he got a
16 10? That's not how you read this record?

17 A. I'm not sure how that works.

18 Q. Okay. So you're not familiar with this type of test?

19 A. No, I'm not.

20 Q. Okay. So let's look at the section that says: "Spoken
21 language comprehension."

22 That one says: "No evidence of difficulty understanding
23 multistep or complex instructions, complex, abstract, implied
24 or indirect questions, or complex or abstract information."

25 You have no reason to doubt the findings of Mr. Kleiman's

1 own physicians, do you?

2 A. I am not familiar with this type of test. I don't know how
3 well it's validated. I don't know whether there is any
4 evidence in the literature that it means anything. And it
5 says: "No evidence," and I would presume -- and this is my own
6 presumption -- that that means no evidence in this test of
7 difficulty, and that's all I can say about it; in other words,
8 I don't know.

9 Q. Again, outside your field, right?

10 A. That's correct.

11 Q. You actually don't have an opinion as to if Dave's mental
12 ability was ever diminished while he was in the hospital?

13 A. I have no opinion regarding this test.

14 Q. Well, you can't quantify in any way how much Dave's mental
15 ability was diminished, if at all, in the hospital, right?

16 A. I cannot do that, no.

17 Q. Okay. Great.

18 So -- but we do know that at least the doctor that
19 administered this test -- we do know his or her findings,
20 correct?

21 A. According to what's written here. According to this test,
22 his findings relating to that test.

23 Q. Okay. Great.

24 So let's talk a little bit about where we finished -- it's
25 not about we -- where you finished yesterday and Mr. Kass

1 stepped right up and picked it up today.

2 So at the very end of the day, you were asked to
3 describe -- I believe the word is in high level, Mr. Kleiman's
4 medical condition during his hospitalization. Do you recall
5 that?

6 A. Yes.

7 Q. And then Mr. Kass repeated that question to you today. You
8 recall that?

9 A. Yes.

10 Q. And right away, these are the things you talked about. So
11 let's go through them with the jury. At the end of the day,
12 within -- I think it's within seconds. It's certainly less
13 than a minute -- you referred to the fact that Mr. Kleiman --
14 well, let's step back one second.

15 Mr. Kleiman was a paraplegic, correct?

16 A. That is correct.

17 Q. As a result of a physical injury, a motorcycle accident,
18 right?

19 A. That is correct.

20 Q. No evidence anywhere, no suggestion anywhere that that
21 motorcycle accident caused brain damage, correct?

22 A. I really can't answer that question. It's out of my field.

23 Q. Great. Thank you.

24 Nevertheless, when you were asked yesterday and today --
25 I'm going to go through the things that you felt -- Mr. Kass

1 left it open to you. He gave you the floor. He let you talk
2 about what you felt was important. So let's see what you felt
3 was important.

4 You told this jury, first, that Mr. Kleiman had difficulty
5 or had lost control of his bladder sphincter. Do you recall
6 that?

7 A. That's correct.

8 Q. Okay. That was medical condition number one.

9 Medical condition number two is -- again, what you felt was
10 important was you told the jury that Mr. Kleiman had lost
11 control of his anal sphincter, right?

12 A. That is correct.

13 Q. Okay. And then where you ended yesterday and picked up
14 back today, you talked about -- and I wrote it down -- you
15 talked about that Mr. Kleiman had what you called "brittle
16 bones"?

17 A. That is correct.

18 Q. And I think you said -- and correct me if I'm wrong -- that
19 for the most part, the brittleness in the bones was
20 concentrated in his lower body?

21 A. That is correct.

22 Q. In the area of the paralysis?

23 A. That is correct.

24 Q. Okay. And then you seemed to talk a decent chunk about it.
25 You talked about his pressure ulcers.

1 A. That is also correct.

2 Q. Is that sometimes called bedsores?

3 A. That's a common colloquial term.

4 Q. Okay. And that's what you shared with the jury?

5 A. That's correct.

6 Q. And then, at the very end, almost as an afterthought --
7 well, let me ask you this: You have some -- you met with the
8 lawyers before you gave your report in this case, right?

9 A. Yes.

10 Q. You met with the lawyers again before you and I first met,
11 whether it was January 2020 or '19 -- whenever that was, you
12 met with the lawyers before that, too, right?

13 A. That is correct.

14 Q. Then after that deposition, you met with the lawyers again.
15 Do you remember that?

16 A. That is correct.

17 Q. And then you issued another opinion. Remember that?

18 A. I was requested another opinion, right.

19 Q. From the lawyers, right?

20 A. From the lawyers.

21 Q. Not from me. When I say: "The lawyers," I didn't request
22 another opinion. Dr. Wright's lawyers said: "Dr. MacIntyre,
23 can you go back and can you add to or supplement your prior
24 opinions," right?

25 A. All I know is it was requested by the lawyers that were

1 discussing it with me. Where they got their ideas, I don't
2 know.

3 Q. Understood. I'm just trying to clarify the lawyers that
4 discussed it with you were not myself, Mr. Freedman, or
5 Mr. Roche. They were some folks over -- some of my colleagues
6 that are representing Dr. Wright?

7 A. That is correct.

8 Q. Okay. And then you issued another report, right?

9 A. That is correct.

10 Q. Okay. And so you understood in all of those conversations
11 generally what the case was about, right?

12 A. I had some idea. Actually, early on when I was reviewing
13 it, I didn't really know that much. I eventually was given a
14 legal document that described the case a little more.

15 Q. Right. Right. You were given I think a copy of a legal --
16 a complaint, right?

17 A. That is correct. I think they called it the second amended
18 complaint.

19 Q. Right. Great. And you understood from reading that that
20 no one, not Dr. Wright's lawyers, not Mr. Kleiman's lawyers --
21 no one was making a claim or a defense one way or the other
22 about whether Mr. Kleiman was able to control his urination.
23 You understood that, right? Did you understand that, or no?

24 A. That's my understanding.

25 Q. Okay. That is your understanding, right?

1 A. Yes.

2 Q. And you understood from reading the complaint and your
3 discussions with the lawyers, that no one -- not Dr. Wright's
4 lawyers, not Mr. Kleiman's lawyers -- were making any claim or
5 defense on whether Mr. Kleiman, a paraplegic, was able to
6 control his defecation. You knew that that wasn't what was at
7 issue, right?

8 A. That is correct. I understand there was no malpractice
9 claim being made.

10 Q. Of course not. Of course not.

11 And there was no claim about the use of the bones in his
12 lower body. Everyone knew he was paralyzed, correct?

13 A. That is correct.

14 Q. Partially paralyzed, correct?

15 So -- but what was important was Dave's brain. You
16 understood that, right? Or did you not?

17 A. I was not asked to evaluate his brain.

18 Q. You were not asked to evaluate any of his mental capacity,
19 correct?

20 A. Mental capacity, no.

21 Q. Okay. But Mr. Kass, at the very end, said to you something
22 like: "Hey, were there some records that talked about him
23 using his computer," and you said: "Yeah. They don't really
24 say what he's doing. I think some say a movie." But you
25 think -- it would make sense for us to walk through those

1 records a little bit, wouldn't it? That would give the jury a
2 better sense of the volume of the records and what Mr. Kleiman
3 was noted as doing, correct?

4 A. Well, from my review of the records, he was -- multiple
5 times the nursing service mentioned, and other services as
6 well, that he was working on his computer.

7 Q. Right. It's not just nurses. It's not just doctors. It's
8 across the board. It is a feature of Mr. Kleiman's medical
9 records that he is constantly working on his computer, isn't
10 it?

11 A. I would not say he was constantly working on his computer.

12 Q. Okay. Great. So let's take a look.

13 In fact, I think you mentioned this. At times, the records
14 even show that he was so focused on his work that he turned
15 down and refused other treatment. You remember that?

16 A. That is correct.

17 Q. Okay. So let's take a look -- let's take a look at the
18 records. By the way, do you recall during your examination,
19 because -- if -- you showed -- if Mr. Kass showed you in front
20 of the jury a single medical record? Do you recall? Did you
21 discuss any medical record of Dave Kleiman on your direct
22 examination? Actually showed it so the jury could see what the
23 actual evidence is? Do you recall that?

24 A. I don't remember whether he did. I don't think he did.

25 Q. You don't think he did. Okay.

1 All right. So let's start off -- let's start with -- let's
2 just start with D101, 633.

3 MR. BRENNER: May we publish all these to the jury as
4 they come up, Your Honor?

5 THE COURT: Yes. They're in evidence.

6 BY MR. BRENNER:

7 Q. Okay. So let's orient the jury of what we're looking at.
8 This is, in fact, a medical record that -- of Dave Kleiman,
9 correct?

10 A. That is correct.

11 Q. One which you reviewed, correct?

12 A. That is correct.

13 Q. Okay. And if you look down at the bottom part there, it
14 says: "Entry date, October 23rd," or: "Date of note, October
15 23rd, 2010"?

16 A. That refers to another note.

17 Q. The date of note next to it, October -- you think -- is
18 that the next note?

19 A. No. Below that horizontal line is the next note.

20 MR. BRENNER: Okay. So let's go one page before then,
21 Ms. Vela, so we can get the date of this note.

22 One more.

23 BY MR. BRENNER:

24 Q. So this note is also actually October 23rd, right?

25 A. That's the date of this note, correct.

1 Q. Let's go back to where we were. So you made reference in
2 your direct examination that one of the issues because of
3 Mr. Kleiman's condition -- and I think you attributed it to the
4 pressure ulcers -- was that it wasn't impossible for him to lay
5 down, but it was a position that the doctors would like to
6 avoid when they can; is that right?

7 A. That's correct.

8 Q. Okay. So here -- here, this note says: "Patient was
9 received sitting up in bed working on his computer," right?

10 A. That is correct.

11 Q. Okay. So let's go -- and we're just going to march through
12 each month and see what we find.

13 A. There's more in that paragraph than just that line.

14 Q. There sure is.

15 A. I would also point out that: "Bilateral trochanter wounds
16 cleaned and dressing changed per MD's order. Scrotal wound
17 also cleaned and dressing changed, vac running continuously."
18 A vac, by the way, is a dressing that's attached to a hose that
19 goes out to a pump providing vacuum to the wound. It's a very
20 good way. Somebody should have gotten a Nobel Prize for that.

21 So it shows how many interruptions were occurring during
22 that shift.

23 Q. Okay. So just so we get, again, what you want to --
24 because you want to emphasize it. So now you want to also add
25 to your list -- you want to emphasize scrotal cleaning, scrotal

1 wounds? That's what you want to emphasize?

2 A. That's one.

3 Q. Correct, Doctor?

4 A. That's one.

5 Q. Okay. And that he was: "Soiling from his stool." That
6 means he had defecated on himself, right?

7 A. That's correct.

8 Q. You wanted to make sure that we didn't move past the record
9 too quick. You wanted the jury to understand that that's in
10 there, right?

11 A. And those all provided interruptions. So we can't say he
12 was sitting up in bed working on his computer during that
13 entire shift.

14 Q. We can't say anything because we weren't there. What we
15 know is that the nurse -- is this a nurse's note?

16 A. This is a nurse's note, that's correct.

17 Q. What we know is the nurse who was actually there, who no
18 doubt in your mind is there to provide care to Mr. Kleiman --
19 right?

20 A. I don't see anything else she should be doing.

21 Q. Right. It's her job. And part of her job is to -- is to
22 note what she observes, right?

23 A. That is correct.

24 Q. She has no interest -- and this is in 2010, right? So she
25 has no interest in how whatever she's observed is going to play

1 in a courtroom 11 years later, right?

2 A. That is correct.

3 Q. Right. And so what she observed is that: "Patient,"
4 Mr. Kleiman, "was received sitting up in bed working on his
5 computer." Meaning when she came in, that's what he was doing?

6 A. That is correct.

7 Q. And then presumably while she was doing her cleaning -- was
8 it cleaning the wounds we just talked about and helping
9 Mr. Kleiman to clean himself, because unfortunately he had
10 defecated -- you think that that interrupted the work on the
11 computer and that's what you wanted the jury to understand?

12 A. That is correct.

13 Q. Okay. Thank you, Doctor.

14 MR. BRENNER: Let's go to D101 at Page 707.

15 BY MR. BRENNER:

16 Q. Okay. This is a note -- as you see above, it's going to be
17 October 20th, right?

18 A. That is correct.

19 Q. Okay. So again, a progress note. This is a nursing note?

20 A. No. That's not a nursing note.

21 Q. Okay. It's a -- oh, this is an infectious disease note?

22 A. That is correct. That's from what appears to be the
23 infectious disease resident or fellow.

24 Q. Okay. And that's -- looks like Alessandra, probably,
25 Regatieri?

1 A. That is correct.

2 Q. And she's the author of the note. And she notes -- now,
3 this is someone who -- the residents, as you call -- or did you
4 call them residents or interns? Just what did you say?

5 A. Could be a resident. Could be an intern.

6 Q. Could also be a doctor, right?

7 A. Well, they are all doctors.

8 Q. Okay. Sure.

9 A. Yeah. Residents and interns are all graduate --

10 Q. They're MDs?

11 A. -- physicians. They are MDs or DOs.

12 Q. Right. Right. Again, like the nurses, no question in your
13 mind that Dr. Regatieri is there to provide care and treatment
14 to Mr. Kleiman, correct?

15 A. That's correct.

16 Q. No question she is there to provide, as part of that care
17 and treatment -- well, let's talk about this. There's
18 something called continuity of care. Do you know that concept?

19 A. That is talked about a lot.

20 Q. Sure. And one of the things that's important is, for
21 doctors, nurses, psychologists -- it's important to note what's
22 going on in the medical records because when the next doctor,
23 nurse, psychologist comes, they see the medical records and
24 they understand what they're looking at, what's gone on until
25 that moment, right?

1 A. That's one of the things that we work on a lot. There is a
2 problem that occurs with the electronic medical record that
3 frequently we're not as good as we should be in dealing with
4 this sort of thing.

5 Q. Okay. But everyone's trying, right?

6 A. Everyone tries.

7 Q. And here Dr. Regatieri says: "Patient always in his
8 computer." Probably meant "on his computer," right?

9 A. Yeah. I guess 24/7 he was working on his computer,
10 according to her.

11 Q. Really?

12 A. Well --

13 Q. Oh, so now you think Dr. Regatieri was exaggerating it?

14 A. Well, I think she was doing what she says the patient was
15 being; very sarcastic.

16 Q. It doesn't say -- you said this to Mr. Kass, and it's just
17 simply -- with all due respect, it's simply not true. This is
18 not her saying: "Mr. Kleiman told me: 'I'm always in my
19 computer.'" This is her observation based on her seeing Mr.
20 Kleiman on his computer.

21 MR. KASS: Objection. The document speaks for itself.

22 THE COURT: Overruled. I'll allow it.

23 BY MR. BRENNER:

24 Q. Yeah. So that just wasn't really accurate.

25 What really is happening here is the doctor walks in, or

1 the nurse walks in, and he or she makes their own observation,
2 right?

3 A. I can't say for sure that that is a correct observation.

4 Q. Okay. And you're -- are you having difficulty deferring to
5 the doctor who was there looking at him?

6 A. I guess then he was 24/7 sitting on a computer, always, or
7 she was being sarcastic, like the patient was.

8 Q. Oh, so Dr. Regatieri may have been sarcastic?

9 A. Yeah, like the patient.

10 Q. Oh, so she -- okay. She got in there and she's a trained
11 doctor, right? And she decided, instead of keeping an accurate
12 medical record, she's going to mimic the patient and become
13 sarcastic at herself and write: "Always in his computer"?
14 That's your best assessment looking back 11 years later on what
15 is before you?

16 A. Well, I can't figure out why she'd use the word "always"
17 for any other reason.

18 Q. Well, would another reason be that every time she came into
19 his room he was on his computer? Would that be -- excuse me,
20 sir. Let me finish.

21 As you and I both understand the English language, would
22 that be a reasonable way to report: "Every time I go in this
23 guy's room, he's on his computer"? Would that be a reasonable
24 way for Dr. Regatieri to report: "Patient always in his
25 computer"?

1 A. I think that's adding a lot to what she says.

2 Q. Okay. Great. Then let's look at a few more and see if we
3 can fill in the picture of what was going on.

4 MR. BRENNER: If you would bring up, Ms. Vela, D101,
5 Page 189.

6 BY MR. BRENNER:

7 Q. Okay. So this one, you saw this all the time, right? This
8 is from November 2010. Okay. I'm not going to get fixated on
9 if it's the 23rd or 24th. It's November of 2010, right?

10 A. This is November 2010. I can't say that I saw this all the
11 time.

12 Q. No. I didn't say -- I misspoke if I said -- not that you
13 saw this all the time. I misspoke if I said that. In fact,
14 you don't remember seeing a lot of these, right?

15 A. I saw several. A lot.

16 Q. Several? Hundreds?

17 A. I didn't count them.

18 Q. You didn't count them. Okay.

19 So this one says: "Patient awake and alert and on his
20 computer."

21 A. Correct.

22 Q. Consistent with what's throughout Mr. Kleiman's
23 hospitalization, correct?

24 A. Well, it's mentioned in many places, yes.

25 MR. BRENNER: Okay. So let's go to the next one, D101

1 at Page 53.

2 BY MR. BRENNER:

3 Q. We're now up to -- we're now up to December. I'm going to
4 ask you to take my word for it.

5 MR. BRENNER: But you know what? Go back one page,
6 please.

7 Got to go one more.

8 BY MR. BRENNER:

9 Q. See that "December 2010"?

10 A. It says: "December 2nd, 2010."

11 MR. BRENNER: Okay. So go to where we were, please.

12 BY MR. BRENNER:

13 Q. And then again: "Patient is alert and interactive."
14 That's another assessment doctors make when they come into a
15 room, right? So if you walk into a room and a patient is,
16 let's say, drugged out, they're on -- they're on -- you know,
17 they're just sleepy, they're drugged out, they're coming down
18 from surgery, you don't write: "Alert and interactive" because
19 they're not alert and interactive, right?

20 A. I think that's a fair assessment, yes.

21 Q. Right. So Mr. Kleiman -- and we'll talk about your
22 opinions on medications later, but at least on this day, he's
23 quite alert and interactive and he's working on his computer,
24 right?

25 A. That is correct.

1 MR. BRENNER: Okay. So let's go to the next one,
2 Ms. Vela, which is D100 at 251.

3 Let's focus on: "Mr. Kleiman has been busy." If you
4 could just highlight that.

5 Can you get rid of all the highlighting and go back
6 to: "Mr. Kleiman has been busy"?

7 BY MR. BRENNER:

8 Q. Okay. "Mr. Kleiman has been busy with work and briefly
9 discussed a conference that he was missing."

10 You see that?

11 A. Okay.

12 Q. Okay. He's been busy with work. Now, that is a quote from
13 her. That one we know is what Mr. Kleiman said because they
14 put a quotation mark. He told the nurse or physician he had
15 been busy with work, right?

16 A. They are relating what the patient said to --

17 Q. Right. So the nurses and the doctors know how to
18 differentiate between what they are seeing and what the patient
19 is saying. And here's one where the patient is saying: "Hey,
20 I'm really busy with work and even had to miss a conference,"
21 right?

22 A. That's what this medical student said.

23 Q. Okay. Actually, this one's signed by a Ph.D., right?

24 A. No. Go up to the top.

25 MR. BRENNER: Okay. Take that down, please. You can

1 take that down, Ms. Vela. Take down the callout.

2 THE WITNESS: "Student note." It's entitled "Student
3 note."

4 BY MR. BRENNER:

5 Q. Right. So what happens is Steven Rosenstein is the
6 student?

7 A. That's correct.

8 Q. And then there's a sign-off by a Ph.D., right?

9 A. That's correct.

10 Q. Okay.

11 A. That's the usual way of handling things.

12 MR. BRENNER: Okay. So let's go to the next one,
13 which is D100 at Page 1.

14 BY MR. BRENNER:

15 Q. I think we're still in January. Again: "Awake, alert, and
16 interactive and working on his computer," right?

17 A. That is correct. And there are many other notes in the
18 record similar to that.

19 Q. Okay. Hundreds?

20 A. I did not count them.

21 Q. Okay. So let's go through.

22 MR. BRENNER: Let's go to D99 at 567.

23 BY MR. BRENNER:

24 Q. We're now into March. We've just done January and
25 February. Again: "Alert, awake, appears active and working on

1 his computer"?

2 A. That's what it says.

3 Q. Starting to sense a pattern?

4 A. I think I mentioned already that there are many notes of
5 this type.

6 Q. Okay.

7 MR. BRENNER: One moment, Your Honor.

8 THE COURT: Certainly.

9 (Pause in proceedings.)

10 MR. BRENNER: Okay. So let's go on. Let's go to the
11 next month. D99 at 360.

12 BY MR. BRENNER:

13 Q. By the way, I know you didn't count them, but you
14 understand -- and we'll tally them up a little at the end. But
15 you understand this is taking place regularly, these types of
16 notes, right?

17 A. There are many notes to that effect.

18 MR. BRENNER: Okay. So let's go to April 2011.

19 For the record, Your Honor, this is D99 at 363.

20 BY MR. BRENNER:

21 Q. We're in April 2011 again. "Patient was working on his
22 computer," right?

23 A. That is correct.

24 Q. Again, observation of the people that are there caring for
25 him in real time, right?

1 A. That's right.

2 Q. They didn't walk in and he had no computer running and he
3 said: "Hey, I'm working on my computer" and they said: "Well,
4 we don't see it, but we'll take your word for it"? That's not
5 what's happening, right?

6 A. At the moment in question: "Patient was working on his
7 computer."

8 Q. Okay.

9 MR. BRENNER: Let's go to the next one, which is D98
10 at 730.

11 BY MR. BRENNER:

12 Q. Okay. Okay. Again, this is one of the ones you talked
13 about how the -- it was the decision of the healthcare
14 providers that were caring for Mr. Kleiman that it was better
15 for his condition, to the extent they could do it, for him to
16 be sitting up, right? I mean, lying down was not great for his
17 condition?

18 A. I think sitting up was -- I also mentioned that that's one
19 of the worst positions.

20 Q. So sitting up was bad?

21 A. Sitting up was bad.

22 Q. And lying down is bad?

23 A. Lying down is bad.

24 Q. Everything's bad?

25 A. Not everything's bad.

1 Q. What's good? Standing up? He can't stand up.

2 A. Lying on side, lying on his stomach.

3 Q. He can't stand.

4 MR. KASS: Objection, Your Honor. The witness is in
5 the middle of speaking.

6 BY MR. BRENNER:

7 Q. He can't stand, correct?

8 MR. KASS: Your Honor --

9 THE COURT: The objection is sustained.

10 Dr. MacIntyre, did you conclude your answer?

11 BY MR. BRENNER:

12 Q. You can go ahead, Dr. MacIntyre.

13 A. I think I've already gone over this. As regards to his
14 pressure ulcers, his bedsores, there were two positions that
15 are particularly bad. One is sitting up and one is lying flat
16 on his back.

17 Q. Okay.

18 A. All other positions were not as bad, but he couldn't stay
19 for a long time in any other position or he'd have a new
20 bedsore.

21 Q. Right. Okay. So this one, the note is: "He's received
22 sitting up in bed, working on his computer, awake and alert,"
23 right?

24 A. That is correct.

25 MR. BRENNER: Let's go to the next month, which is D98

1 at 568.

2 BY MR. BRENNER:

3 Q. Again: "Awake, alert, working on his computer and talking
4 on the phone," right?

5 A. That's correct.

6 Q. In fact, it's generally the number one observation every
7 time a healthcare professional walks into this gentleman's
8 room, right?

9 A. I would not say that for sure. I would have to go back and
10 review every note and do an analysis of how many times the
11 first note -- the first thing noted was that.

12 It is true that, in a physical exam, you usually have
13 "general" as the first line and that would indicate usually the
14 position of the patient, how alert he was, and so forth. That
15 doesn't necessarily mean that's the most important observation.
16 It just means it's the first in the template.

17 Q. No. But it's the visual observation. They walk in the
18 room, right? Here's the patient. They walk in. They note his
19 position, right? Sometimes they note his position?

20 A. Sometimes. That is correct.

21 Q. They almost always make some note about whether they're
22 alert and active or interactive?

23 A. Well, they sometimes do. Sometimes they don't bother to.

24 Q. Okay. Well, here we seem to see it a lot, right?

25 A. That's correct.

1 Q. And the other thing they observe generally -- they all do
2 it. Doesn't matter if it's a doctor, a student, a
3 psychologist, a nurse. The common theme is everyone notes that
4 Dave Kleiman is a guy who's always working on his computer,
5 right?

6 A. I wouldn't say everyone and I wouldn't say always.

7 Q. Okay. You wouldn't because you didn't focus on that when
8 you went through the records?

9 A. I think it would have been impossible for him to be working
10 on the computer all the time with the amount of treatments and
11 things that he was getting.

12 Q. So if I were being literal, you're right. It is impossible
13 for him 24 hours a day, seven days a week to be working on his
14 computer, right?

15 A. That is correct.

16 Q. Okay. But you don't disagree that the medical records
17 demonstrate a pattern that he's working on his computer a whole
18 lot in the hospital, right?

19 A. I would say that he was frequently working on a computer.

20 Q. Okay. Great.

21 A. I can't say what percent of his time he was working on the
22 computer. I can't say what he was doing on the computer.

23 Q. Right. You didn't like my word "a lot." You went with
24 "frequently"?

25 A. "Frequently," yeah.

1 Q. Okay. That's better. We'll use "frequently."

2 MR. BRENNER: Next one's D98 at 124.

3 BY MR. BRENNER:

4 Q. Now we're into July. Again: "Awake, alert, working on his
5 computer."

6 A. That is correct.

7 Q. Okay.

8 MR. BRENNER: Okay. So let's look at D97 at 571,
9 which is in August.

10 BY MR. BRENNER:

11 Q. Okay. This is what the patient reports, correct?

12 A. That is correct.

13 Q. 2011 he's reporting this, right?

14 A. That is correct.

15 Q. You understand he's reporting it to the people that are
16 providing him care and treatment, correct?

17 A. I didn't have a chance to see what the source of this note
18 is. I thought it was a psychology note.

19 Q. Okay. Let's go back. Let's go back. Do you want to go --
20 so this is from Natalie Bustillo, right?

21 A. Yeah. It says up there it's a psychology note.

22 Q. Right. A psychology note. This one's not -- unlike the
23 others -- I think the other psychology note was a student.

24 This one is -- it doesn't say: "Student," right?

25 A. Well, I'd have to look at the bottom and see who signed it

1 off.

2 MR. BRENNER: Okay. Let's go to the next page,
3 please.

4 Thank you, Ms. Vela.

5 BY MR. BRENNER:

6 Q. The next page, it's signed off by Maria Pilar Somoza,
7 Ph.D.?

8 A. She's a Ph.D. psychologist.

9 Q. And she is signing off for Natalie Bustillo, who's also a
10 Ph.D.?

11 A. No.

12 MR. BRENNER: No. No. Up. Up.

13 THE WITNESS: There.

14 MR. BRENNER: Yeah.

15 BY MR. BRENNER:

16 Q. So Ms. Pilar Somoza. And if we looked -- or Dr. Pilar
17 Somoza -- excuse me -- if we looked at the previous page, she's
18 the supervising Ph.D., right?

19 MR. BRENNER: Let's go to the previous page so you can
20 see.

21 THE WITNESS: Yeah. I don't see why they have two
22 Ph.D. psychologists signing off on this note, but they do.

23 BY MR. BRENNER:

24 Q. But they do.

25 Okay. Are you now comfortable that you know what the note

1 is?

2 A. Well, yeah. As I said before, a psychology note.

3 Q. Okay. Great. Next page.

4 "He," meaning Dave Kleiman, "reported he works in the field
5 of computer forensics and is able to conduct business from his
6 hospital bed using his laptop computer."

7 You see that?

8 A. That's right. That's what the patient reported to the
9 psychologist.

10 Q. And the patient actually said: "He indicated his ability
11 to continue working has helped him cope with all his medical
12 problems." That's not unusual. He uses his work to help him
13 cope. He had serious medical problems. We could agree with
14 that, right?

15 A. He had serious medical problems.

16 Q. He had a serious accident. He's got a serious permanent
17 medical condition. No question, he had serious medical
18 problems, right?

19 A. That is correct.

20 Q. And he's telling the doctors one of the ways that he copes
21 with the position he finds himself medically is he works?

22 A. That's what the psychologist reports him saying.

23 Q. Right. And you have no reason to doubt that he said that,
24 right?

25 A. No. He said that.

1 Q. Okay. But do you have some doubt that he meant it?

2 A. I have no idea. I'm not the psychologist.

3 Q. And you're not Dave Kleiman, right?

4 A. I don't know whether that's a true statement or not.

5 Q. Okay. Let's go to September. This is an issue that you
6 talked about with Mr. Kass, but we didn't see any records on
7 it. So let's take a look at that.

8 MR. BRENNER: D97 at 239.

9 BY MR. BRENNER:

10 Q. Doctor, I want to make sure you're oriented as to who is
11 taking the note because that -- you want me to scroll up and
12 let you see that?

13 A. That is correct.

14 MR. BRENNER: Okay. So let's go up.

15 Up.

16 So I guess -- no. We go to the -- no.

17 BY MR. BRENNER:

18 Q. It's -- the author is Scott Charlebois, right?

19 A. Yes. That's a --

20 Q. He's an occupational therapist, right?

21 A. Okay. That's occupational therapy, yeah.

22 Q. So now it's another -- another -- how would I put this --
23 another category of healthcare providers that are visiting
24 Mr. Kleiman?

25 A. They would have interrupted what he was doing, correct.

1 Q. Right. So Mr. -- well, yeah -- well, we'll see about that.
2 So Mr. Charlebois comes in, and his reason for being there is
3 he's going to provide -- he's going to provide occupational
4 therapy, right?

5 A. That's correct. He's an occupational therapist.

6 Q. Right. And he's unable to do what he came to do because
7 Mr. Kleiman says: "I'm working on my computer"?

8 A. That's correct.

9 Q. Okay. So that's the example of what you're talking about.
10 He even -- Mr. Kleiman was so focused on his work in the
11 hospital that sometimes -- and you probably don't think this is
12 a good idea for him -- but sometimes he turned away medical
13 treatment or, in this case, occupational therapy?

14 A. This is one of the ones that -- I believe I remember noting
15 this one, that he would refuse his therapy sometimes. I also
16 notice in this note that they measured his grip strength. So
17 they were able to do something with him.

18 Q. Correct. He says that.

19 A. And the grip strength was impaired.

20 Q. Right. He did something. He did part -- I think he calls
21 it a mini?

22 A. Mini grip strength.

23 Q. Right. He does some, but then Mr. Kleiman says:

24 "Mr. Charlebois, I'm not going to do the rest because I've got
25 work to do"?

1 A. Yeah. That's interesting. It's also interesting that he
2 had diminished grip strength. I hadn't noted that before.

3 Q. Okay. Well -- because you weren't looking for this stuff,
4 right?

5 A. I wasn't. No.

6 Q. Okay.

7 MR. BRENNER: Let's go to December, D96 at 336.

8 BY MR. BRENNER:

9 Q. Okay. Again, yet another record where the observation --
10 when I say: "The first observation," I'm not -- I don't know
11 what the doctor felt was most important or not. But what he
12 notes first, if this is a he -- what he or she notes is that:
13 "The patient's alert," right? Not looped out on drugs, right?

14 A. "Patient is alert."

15 Q. "Interactive"?

16 A. That's what they say.

17 Q. That means able to interact with the doctor or nurse or who
18 is ever in there, correct?

19 A. That's correct.

20 Q. "And working on his computer"?

21 A. That's correct.

22 Q. Okay.

23 A. You'll also note that all of these, when it's a physical
24 exam, the general template is to put "general" first.

25 Q. Yes. No doubt. No doubt.

1 MR. BRENNER: Okay. Let's go to the next one because
2 I'm going to ask you -- let's bring up D96 at 105.

3 BY MR. BRENNER:

4 Q. Sir, do you remember -- you talked about this -- that -- I
5 think you said everyone on the jury would understand and you
6 sort of smiled. But you talked about how when you are in the
7 hospital -- in this case the VA, but in the hospital too. It's
8 no different -- that people talk about how like they feel like
9 people are always coming in and prodding and poking them at all
10 hours, right?

11 A. That is correct.

12 Q. Yeah. It could be annoying. I don't mean annoying that
13 the doctors are doing anything wrong. They're doing what they
14 need and the nurses are doing what they need to take care of
15 the patient. But for example, they may need to be taking
16 temperature readings every few hours, and that's annoying if
17 you're trying to sleep, right?

18 A. And they're also turning the patient every two hours.

19 Q. Okay. I'm going to tie my shoe. Excuse me for one second.

20 (Pause in proceedings.)

21 BY MR. BRENNER:

22 Q. So did you notice when you went through the medical records
23 that sometimes, because -- for whatever reason, they noted the
24 time of when they were seeing Mr. Kleiman?

25 A. They're supposed to. That's correct.

1 Q. Okay. So in this one, they're saying they're there in the
2 early morning. So they get there early morning. Now, in
3 doctor speak, early morning is probably pretty early, right?

4 A. I don't know what this particular individual considers
5 early in the morning.

6 Q. You know doctors round early in the morning, right?

7 A. Well, some do. Some don't.

8 Q. Some do. Some don't. Okay.

9 A. Nurses frequently round early.

10 Q. Sure.

11 And in this particular record, they note that it's early in
12 the morning, and guess what? Dave is what? What's he doing?

13 A. You want me to read it?

14 Q. Sure.

15 A. "Patient was in a pleasant mood this early morning and
16 worked on his computer."

17 Q. I've been working so hard doing the reading, I thought I
18 would let you take a few. Is that okay?

19 A. That's what it says.

20 Q. Okay. Great.

21 MR. BRENNER: Let's go to the next one. February.
22 D95 at 719.

23 BY MR. BRENNER:

24 Q. Okay. This is in February. Again: "Patient was alert and
25 interactive and working on computer"?

1 A. Yeah. This is interesting. That's the only thing he notes
2 in his physical examination.

3 Q. Okay. Interesting, right?

4 A. That's right.

5 MR. BRENNER: Okay. Next, March 2012. D95 at 346.

6 BY MR. BRENNER:

7 Q. So this one says: "Alert, interactive, working on his
8 computer." Do you see that?

9 A. He seems to have adopted that particular template for his
10 exams.

11 Q. He?

12 A. Or she.

13 Q. No. No. Many. It's across -- it's doctors, it's nurses,
14 it's occupational therapists, it's psychologists. It's not
15 "he."

16 A. Well, here, we see two word-for-word the same statements.
17 I wouldn't be surprised if it was the same person who wrote it.
18 Maybe not.

19 Q. You don't know? You didn't look.

20 A. No -- well, I didn't have a chance to look.

21 Q. Did someone stop you -- was -- excuse me, let me --

22 A. You took this off pretty quickly.

23 Q. Oh, no. You want to see the whole record? Well, first of
24 all, we cut off half a word. So let's not do that. We don't
25 mean to do -- so what would you like to see, Doctor?

1 When I said you didn't look, I mean you didn't look through
2 the records to do this analysis to see if it was one doctor or
3 a hundred doctors that are making this --

4 A. What I looked was through to see -- and as I stated on
5 multiple occasions, frequently various caretakers make a
6 statement that he was working on his computer.

7 Q. Got it.

8 MR. BRENNER: And the next one, if you could bring up
9 the full blowup that includes the word "neuro."

10 BY MR. BRENNER:

11 Q. You see that right under "general"?

12 A. Yes. Uh-huh.

13 Q. Okay, Doctor. And that had been cut off and that was
14 inadvertent. In the "Neuro": "A times OX times three." That
15 means alert and oriented times three, right? Or do you not use
16 that?

17 A. I don't use that abbreviation. That's a rather weird
18 abbreviation.

19 Q. But you're familiar with when doctors write that a patient
20 is alert and oriented times three, right?

21 A. That's correct.

22 Q. And it means what?

23 A. It means he knows where he is; that's one. He knows who he
24 is; that's two. He knows when it is; that's three.

25 Q. Got it.

1 MR. BRENNER: Okay. Let's go to -- give me one
2 second.

3 Okay. Let's go to April, which is D95 at 316.

4 BY MR. BRENNER:

5 Q. So this is April 2012. Again, you seemed to -- you seemed
6 to think it was interesting they were using the same words, so
7 here we're -- different words, right? Again, doctor or nurse
8 is in there giving what they're observing, right?

9 A. Yeah. This one was a nurse and she says the same thing.

10 Q. Well, yes. She says the same thing: "Dave's working on
11 his computer," but you seemed to point out before that you
12 thought it was sort of a template. So I'm just pointing out to
13 you she uses different words, right?

14 A. This particular one is using different words. It's
15 probably a different person writing the note.

16 Q. Okay. So: "Patient was received sitting up in bed and
17 working on his computer", "patient was awake and alert," right?

18 A. Right.

19 MR. BRENNER: Okay. Let's go to the next one, May.
20 D94 at 725.

21 I'm sorry, Ms. Vela. I don't mean to make you read my
22 mind.

23 BY MR. BRENNER:

24 Q. Again, this is a nursing note from Tyrone Boyd, right?

25 A. That is correct.

1 Q. No question in your mind that Tyrone Boyd is being an
2 honest and accurate recorder of what he is observing at that
3 moment?

4 A. That is correct.

5 Q. And he observes that he: "Received the patient in bed,
6 alert and oriented times three, working on computer, breathing
7 even and unlabored," right?

8 A. That is correct. Like frequently occurred elsewhere in the
9 notes.

10 Q. Right.

11 MR. BRENNER: Okay. Let's go to -- let's go to D94 at
12 604, which is June.

13 BY MR. BRENNER:

14 Q. Again: "Patient was received in bed -- received sitting up
15 in bed working on his computer," right?

16 A. That's what it says.

17 MR. BRENNER: Okay. Let's go to July 2012, which is
18 D94 at 221.

19 BY MR. BRENNER:

20 Q. Are you ready to read one?

21 A. If you would like me to, I'll read it.

22 Q. I would.

23 A. "Received patient in bed, alert, oriented times three.
24 Working" --

25 (Court reporter interruption.)

1 THE WITNESS: "Received patient in bed, alert,
2 oriented times three, working on computer, breathing even and
3 unlabored. No signs or symptoms of distress or complaint of
4 pain noted. Skin dry and warm to touch, indwelling catheter."

5 BY MR. BRENNER:

6 Q. Okay. The last part is he's not -- that means -- "or CO
7 pain," that means he's not complaining of pain?

8 A. That's correct.

9 MR. BRENNER: Let's go to D94 at 27.

10 BY MR. BRENNER:

11 Q. And, Doctor, just so you know, we're in August now of 2012.

12 Again: "Received patient in bed, alert and oriented times
13 three, working on computer, breathing even and unlabored.

14 No" -- what's SS? I'm sorry. I didn't catch it last time.

15 A. Signs or symptoms. This is exactly the same wording as the
16 last note.

17 Q. Correct. Correct. This is Tyrone Boyd again, right?

18 A. He seems to like that particular formula.

19 Q. Right. But -- he likes that formula, but you have no doubt
20 what he's saying is what he's observing, right?

21 A. I think it's fair to state that, yes.

22 Q. Yeah. Okay. But he likes a particular way to word it,
23 Mr. Boyd.

24 MR. BRENNER: Okay. Let's go to September 2012, which
25 is D93 at 659. It says -- can you blow up the whole thing that

1 says: "Activities"?

2 BY MR. BRENNER:

3 Q. It says: "Activities," although it's spelled wrong. It
4 says "OOB"? Is that out of bed?

5 A. Out of bed.

6 Q. Out of bed. Okay.

7 So on this time, he's out of bed and he's working on his
8 computer. And does the slash mean he's also getting rehab
9 while he was working on his computer?

10 A. That is what the patient reports to this particular
11 therapist as what he does, his activities.

12 Q. Okay. So he tells the therapist --

13 A. That's what he tells the therapist.

14 Q. Right. He's basically got two things going on in his life
15 at that point.

16 A. He says: "Working on computer and rehab."

17 Q. Right. He does both. Right?

18 A. That's correct.

19 Q. Okay.

20 A. He doesn't seem to mention all the other -- well, of
21 course, under rehab, would be the wound care and so forth.

22 Q. Sure. Did you want to talk about his painful and -- wound
23 care again?

24 A. Well, I didn't say: "Painful," but there are many other
25 things going on that he doesn't mention.

1 Q. Sure. Because he's focused on his work, right? That's
2 what he's focused on?

3 A. That's what he tells the therapist that he's doing.

4 Q. Okay. You have no basis or reason to deny -- to call into
5 question that Mr. Kleiman is being honest with his healthcare
6 professionals, right?

7 A. He was working on his computer many, many times is
8 definitely in the record.

9 MR. BRENNER: Okay. Let's go to D93 at 455.

10 BY MR. BRENNER:

11 Q. We're up to October. Again, this is a different nurse.
12 This is Valerie Allison, right?

13 A. That is correct.

14 Q. She's a staff nurse. So she's an LPN. What's an LPN?

15 A. Licensed practical nurse.

16 Q. Okay. And Ms. Allison says that -- again, her
17 observations. First comment she notes: "Received the patient
18 sitting up in bed, talking on the phone, and working on his
19 computer"?

20 A. Now, also: "Patient denied pain but admitted to not
21 feeling well."

22 Q. Okay. Well, I don't want to deprive you of the opportunity
23 to talk about the records. So let's blow it up.

24 Let's see. Did you find other things here that you thought
25 would be important for the jury to know?

1 A. Well, I found it interesting he's not feeling well.

2 Q. Okay. Feeling well or not feeling well, he's still working
3 on his computer, right?

4 A. That's right.

5 Q. Okay. Are you good with that record? Can we move on?

6 A. Well, I'm sure you have another 50 of these to go over, so
7 let's go.

8 Q. You have to be somewhere?

9 A. No. It's just that we have been doing the same thing for
10 the last hour.

11 Q. Okay.

12 A. I will agree that there are many references in the record
13 that he was working on a computer.

14 Q. Okay.

15 MR. BRENNER: Let's go to the next one, D93 at Page
16 78, 79.

17 BY MR. BRENNER:

18 Q. Here, it's actually -- it's not -- this is -- this is
19 Ms. Somoza. Dr. Somoza, if you recall from the prior record,
20 she's the supervising Ph.D., right?

21 A. That is correct.

22 Q. And in other records we saw Dr. Somoza was signing off on
23 the records of -- in one case, another Ph.D.; in another case,
24 one of her students. Do you recall that?

25 A. That is correct.

1 Q. Here it appears to me, and you correct me if I'm wrong,
2 that Dr. Somoza herself is making the observation, right?

3 A. That is correct.

4 Q. And she says Mr. Kleiman was working at the time of the
5 visit, right?

6 A. That is correct.

7 Q. And while she's there, he continues to work, right?

8 A. That is correct.

9 Q. Okay.

10 MR. BRENNER: Your Honor, I could do one more and then
11 take a small break before we get to 2013.

12 THE COURT: Yes. Of course.

13 MR. BRENNER: So let's do the last one for 2012. It's
14 D93 at Page 1.

15 BY MR. BRENNER:

16 Q. And again: "Patient" -- "received patient in bed." This
17 is Mr. Boyd. He's actually using different language than he
18 used before, right? Or was this his language?

19 A. What's the question?

20 Q. Yeah. This is Mr. Boyd. I think he's using different
21 language. You said he always does the same thing. I think
22 this one's different, right?

23 A. It's somewhat different.

24 Q. Says: "Received patient in bed." Again: "Alert and
25 oriented."

1 A. "Working on computer, breathing even and labored." Again,
2 as I said, there are many, many times -- frequently there are
3 references to him working on a computer.

4 MR. BRENNER: Your Honor, can we take a brief recess?

5 THE COURT: Yes.

6 MR. BRENNER: Thank you.

7 THE COURT: All right. Ladies and Gentlemen, let's
8 take a 20-minute recess.

9 (Jury not present, 11:23 a.m.)

10 THE COURT: Okay. We're on a 20-minute recess.

11 MR. BRENNER: Thank you, Judge.

12 (Recess from 11:24 a.m. to 11:44 a.m.)

13 THE COURT: All right. Welcome back.

14 All right. Dr. MacIntyre, come forward.

15 Anything we need to address? Are we ready to
16 continue?

17 MR. BRENNER: Ready from the Plaintiffs.

18 MR. RIVERO: Defendant is ready, Your Honor.

19 THE COURT: Okay. Let's bring in the jury.

20 (Before the Jury, 11:44 a.m.)

21 THE COURT: All right. Welcome back. Please be
22 seated.

23 And we'll continue with the questioning.

24 BY MR. BRENNER:

25 Q. Good afternoon again, Dr. MacIntyre. Still good morning.

1 Okay. I'm going to pick up where we left off, but I'm
2 going to move a little more quickly through the records. I
3 said we would talk about 2013. So let's do a couple from then,
4 okay?

5 A. Okay.

6 MR. BRENNER: Ms. Vela, if you could bring up D92 at
7 657.

8 BY MR. BRENNER:

9 Q. Okay. So this is from January 11th, 2013. See that?

10 A. Yes, I do.

11 Q. And it's a nurse's note. See that? Valerie Allison?
12 We've seen Ms. Allison before.

13 A. Yes. Uh-huh.

14 Q. Nursing note, right?

15 MR. BRENNER: Oh, I'm sorry. Can we publish that?

16 BY MR. BRENNER:

17 Q. Let's start over. Dr. MacIntyre, you have in front of you
18 D92 at Page 657. It's a nursing note from January 11th, 2013.
19 You see that?

20 A. Yes, I do.

21 Q. And we've seen Ms. Allison before, right?

22 A. Yes, I do.

23 Q. Okay. So this one, remember we talked about earlier the
24 note that Dave Kleiman's working on his computer early in the
25 morning?

1 A. Yes.

2 Q. So this one's actually at 2000 hour; that's 8:00 at night
3 in military time?

4 A. That is correct.

5 Q. Okay. So here's a note at 8:00 at night, right?

6 A. That is correct.

7 Q. And, again, whether it's early morning or late at night,
8 he's just sitting up in bed working on his computer, right?

9 A. That is correct.

10 MR. BRENNER: So let's go to one more, which is D92 at
11 316.

12 BY MR. BRENNER:

13 Q. This one is -- so we have early morning. We have 8:00 at
14 night. Now this one says that he's sleeping when they walked
15 up -- when they walk up, right?

16 A. That's what it says.

17 Q. And it says the reason he's sleeping this time is because
18 he stayed up late last night working, right?

19 A. That's what it said.

20 Q. Okay. Well, yes. He's sleeping when the nurse sees him.
21 And he explains to her why he's sleeping, right, because he
22 needs to sleep late because he was up late working, right?

23 A. That's what he said.

24 Q. Okay. Great.

25 Doctor, would you have any reason to dispute that there are

1 over 250 references in Dave's medical records to him working in
2 the VA?

3 A. As I said before, I didn't count them myself but they are
4 frequently referred to.

5 Q. Would you have any reason to dispute there are 520
6 references to him working on his computer?

7 A. The same story. I didn't count them myself but it's
8 frequently referred to.

9 Q. Any reason to dispute there's over 3,000 references to him
10 being oriented?

11 A. Well, I would presume because that's a standard statement
12 for anybody as a part of the general physical examination.

13 Q. And over 4,000 references to him being alert. Any reason
14 to dispute that?

15 A. And, again, that's one of the standard statements being
16 made.

17 Q. Okay. And there's nothing in Dave's physical condition
18 that prevented him from using his computers, correct?

19 A. Well, I wouldn't say that that's always the case. But in
20 many -- most of the time, there's nothing to prevent him from
21 working. The problem would be that he's being interrupted
22 frequently as he worked.

23 Q. Right. So he could be working all day, except when they
24 come in and have to do their stuff to help provide care to him,
25 right?

1 A. Which would be a large part of the day, yes.

2 Q. Okay. I want to talk just about a couple more items. You
3 talked urinary tract infections. You say basically he had a
4 constant urinary tract infection?

5 A. That he was -- there was an underlying presence of bacteria
6 in the urine at all times. But then there were -- an acute
7 anachronic problem, that he would have acute exacerbations with
8 some occasions leading to bacteremia.

9 Q. Right. We'll talk about -- say that word again?

10 A. Bacteremia.

11 Q. Bacteremia.

12 A. Presence of bacteria in the bloodstream.

13 Q. Okay. I was going to miss one of those syllables. Thank
14 you.

15 The truth is, between 1995 and 2013, there's only five or
16 six times that Dave Kleiman had a symptomatic infection,
17 urinary tract infection? Twenty-year period?

18 A. I think that would be what has been recorded, but that
19 doesn't mean that he didn't have a chronic problem with the
20 urinary tract.

21 Q. In the medical records you reviewed, five or six times over
22 a 20-year period he is noted to have a symptomatic urinary
23 tract infection?

24 A. That is correct. And also during that entire time he
25 required catheterization for the urine.

1 Q. Right. We talked about the bladder sphincter, that he had
2 lost control of that?

3 A. That is correct. Not just the sphincter, the ability of
4 the bladder to contract. I didn't mention that before, but
5 that's part of the problem.

6 Q. Okay. So Dave needs help passing urine, right?

7 A. That's correct.

8 Q. And other than the times that there is bacteremia, a UTI
9 would not affect someone's mental ability, correct?

10 A. In general, that is correct.

11 Q. Okay. And you told me in deposition Dave had bacteremia a
12 total of three times?

13 A. That's what I found in the record during this particular
14 hospitalization.

15 Q. That's all you have to go by.

16 A. During this hospitalization, that's correct.

17 Q. Sure. Each time, it lasted only a short period of time,
18 correct?

19 A. Well, it was adequately treated.

20 Q. Right. And you saw no evidence that these three short
21 periods had any effect on Dave's mental state, correct?

22 A. Well, in general, bacteremia can do that. But I don't see
23 anything in the record specifying that.

24 Q. Right. Can; just didn't with Dave? No record that it did
25 with Dave?

1 A. Not specified in the record.

2 Q. Okay. And that's all we have to go by, right?

3 A. Well, again, one of the problems with medical records,
4 there is an overlying idea that if it's not recorded, it didn't
5 happen. But that is never necessarily the case. We miss out
6 on things frequently in the medical record. So I would not
7 agree with the statement if it's not recorded, it didn't
8 happen.

9 Q. Okay. We'll move on to another subject, which is
10 surgeries. Just real quick, seven surgeries between 2010 and
11 2013, right?

12 A. Yeah. I accounted -- I counted seven formal surgical
13 procedures. That's not counting bedside debridements.

14 Q. Right. And you're not offering an opinion in this case
15 that any of Dave's surgeries had any -- caused any sustained
16 impairment on Dave's ability to think, correct?

17 A. Correct. The key word being "sustained."

18 Q. Right. Well, when he's under anesthesia, he's not thinking
19 great, right?

20 A. That's correct.

21 Q. And the anesthesia takes like a day to wear off, maybe two
22 days?

23 A. One to two days is what I said before, yes.

24 Q. Seven surgeries. Let's give him two. Let's give you the
25 bonus day. That would be 14 days over a -- I tried to count

1 it.

2 MR BRENNER: How many days was it, Mr. Holtzman?

3 BY MR. BRENNER:

4 Q. Nine hundred days that you looked at?

5 A. It is counted up in one of those exhibits that came by
6 yesterday.

7 Q. Okay. So I think it's like high 800s, whatever it is. So
8 14 of those days, he may have had the effect of anesthesia?

9 A. That are recorded, that's correct.

10 Q. Right. Just that are recorded in Dave's medical records,
11 right?

12 A. That's correct.

13 Q. Okay. Let's just talk briefly about medication. You sort
14 of broad-brushed it a little bit, so let me break it down. You
15 mentioned -- you told us in your expert opinion -- just so the
16 jury understands, you gave an expert report in this case. You
17 recall that?

18 A. Well, I gave --

19 Q. Two.

20 A. -- two reports.

21 Q. My bad. You gave two. You gave one in December of '19, I
22 think?

23 A. Yes.

24 Q. And then you gave -- I forgot if you called it a
25 supplemental or amended, something you gave in April of 2020?

1 A. That is correct.

2 Q. Right. And in those reports, you outline for us -- because
3 that's what the rules require, you outlined what your opinions
4 were, right?

5 A. That is correct.

6 Q. And then I had an opportunity to take your deposition to
7 make sure that your report adequately covered your opinions.
8 You remember that?

9 A. That is also correct.

10 Q. Right. And in your report, you identified two medications
11 that could -- remember the word "could" -- could have had an
12 effect on Dave Kleiman's mental ability?

13 A. That is also correct.

14 Q. One of them was -- and you're going to have to help me with
15 the pronunciation -- it's called Ertapenem?

16 A. That's an antibiotic, yes.

17 Q. So that was your antibiotic opinion. And do you recall,
18 did you look -- so he -- Dave definitely was subscribed --
19 prescribed, not subscribed -- prescribed Ertapenem while he was
20 in the hospital, right?

21 A. He had a course of Ertapenem, that's correct.

22 Q. And I think -- let's just for -- so we could move it along,
23 let's assume there's about 850 to 900 days that you looked at
24 records, okay?

25 A. Well, sure.

1 Q. Okay. Dave was prescribed Ertapenem for a total of -- do
2 you remember?

3 A. I don't remember, but the usual -- it would be from one to
4 six weeks.

5 Q. Right. He had 10 days total.

6 A. Well, I would have to go back and see that. He didn't
7 receive it for a long period of time.

8 Q. He did not -- or what did you say?

9 A. He did not receive it for a long period of time. Of course
10 it depends on your definition of long. He had one course of
11 Ertapenem.

12 Q. Mine's 10 days. Are we calling that long or short?

13 A. I'll agree to that.

14 Q. You'll agree to that. So 10 days he received this
15 antibiotic. And you agree with me that the side effect of --
16 that it has some sort of effect on your alertness or whatever
17 is a rare side effect of Ertapenem. Do you agree with that?

18 A. It is unusual. I've seen it once.

19 Q. It's not usual. And none of the medical records note that
20 Dave had any effect from Ertapenem, right?

21 A. That is correct.

22 Q. Okay. Then you also mentioned Valium, right? That was
23 this other drug you mentioned?

24 A. That is correct.

25 Q. And I think there's Valium -- there's another name for it,

1 right?

2 A. Well, the generic name is diazepam.

3 Q. Got it. So we'll call it Valium. That's what you called
4 it on direct. You don't know if Valium had any -- well, strike
5 that.

6 There's no record that Valium had any negative effect -- in
7 Dave's medical records, there's no medical record that
8 demonstrates that Valium had any negative effect on Dave's
9 mental state?

10 A. It's not specifically recorded as such.

11 Q. Right. It's not generally recorded. There's no record of
12 it?

13 A. It's not specifically recorded as such.

14 Q. Okay. In fact, there isn't a single notation in the
15 medical records that -- medical records that you reviewed that
16 Dave ever had a decreased mental state because of any
17 medication that he was prescribed at the VA, correct?

18 A. It's not specifically recorded as such.

19 Q. In fact, you went and looked for that, didn't you, Doctor?

20 A. In general, yes.

21 Q. And you didn't find it, right?

22 A. I didn't find any, no.

23 MR. BRENNER: Okay. Let me check with my colleagues,
24 Judge.

25 THE COURT: Certainly.

(Pause in proceedings.)

MR. BRENNER: Doctor, thank you so much for your time.

Your Honor, I have no further questions.

THE COURT: All right. Any redirect?

MR. KASS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. KASS:

Q. Dr. MacIntyre, do you remember being asked whether Dave's medical records were introduced into evidence yesterday?

A. Whether I was asked if his medical record was introduced into evidence?

Q. Yes. Do you recall that?

A. I'm trying to remember. I'm sure it was, but ...

Q. Well, I'll make this easier.

MR. KASS: Mr. Reed, if you could pull up D091. D091.

(Pause in proceedings.)

MR. KASS: If we could show D091 to the witness and the jury.

(Pause in proceedings.)

THE COURT: Liz, do you want to call IT? He might have a problem on his end.

Oh, there we go. Okay.

MR. KASS: I'm sorry, but if you could take that down. I don't believe that's 091.

There we go.

1 BY MR. KASS:

2 Q. Dr. MacIntyre, I believe we have the exhibit up. Do you
3 recall being shown this document yesterday?

4 A. I remember seeing this. Yes. Uh-huh.

5 MR. KASS: And, Mr. Reed, if you could go down to the
6 second page.

7 BY MR. KASS:

8 Q. And do you recognize this as the medical records that you
9 were shown yesterday?

10 A. That is correct. It says at the bottom: "Page 2 of
11 1,000." What happened was it was divided up into packets of
12 1,000 pages each.

13 Q. Do you recall if this document was admitted into evidence
14 yesterday by counsel for the Defense?

15 A. Yes.

16 Q. And do you recall if the other sections of this medical
17 record that was broken down was introduced into evidence
18 yesterday?

19 A. My understanding is that all those over 10,000 pages were
20 introduced. That is correct.

21 Q. Right. And would that include D091, D092, D093, D094,
22 D095, D096, D097, D098, D099, D100, D101, and D102?

23 A. Yes. I remember that list being read off. Each one of
24 those is one of those packets of a thousand pages.

25 Q. And those are the ones that were introduced into evidence

1 yesterday by counsel for Defense?

2 A. That is correct.

3 Q. Mr. Brenner spent a significant amount of time going
4 through Mr. Kleiman's medical records, methodically pointing
5 out certain instances where Dave was noted to have been working
6 on his computer. Do you recall approximately around how many
7 times they were, how many documents he had shown you?

8 A. Well, again, as I said with him, I didn't add them up or
9 count them out. I believe he asked: "Do you think it would
10 have been 100 times," and I would have to agree with that. It
11 may be more.

12 Q. But would you be surprised if he had shown you more than 25
13 in this courtroom today?

14 A. Yeah. It was getting to be a bit repetitious.

15 Q. Okay. Now, Mr. -- and as far as -- so if he showed you
16 around 25 pages today of Dave Kleiman's medical records -- and
17 we know Dave Kleiman's medical records are how many thousands
18 of pages, did you say?

19 A. Around 11,000.

20 Q. Okay. Percentage-wise, do you have any idea -- you would
21 agree it's a pretty small percentage, correct?

22 A. It's a lot of paper.

23 Q. Okay.

24 MR. KASS: Mr. Reed, if you could pull up the
25 demonstrative exhibit showing the days Dave Kleiman was in the

1 hospital.

2 COURTROOM DEPUTY: Mr. Kass, is that for everyone to
3 see?

4 MR. KASS: Yes, it is. It was shown yesterday without
5 objection.

6 (Pause in proceedings.)

7 MR. KASS: If you can go to the slide right before
8 that where you see the total amount of days.

9 Okay. Perfect.

10 BY MR. KASS:

11 Q. Dr. MacIntyre, do you recall being shown this yesterday?

12 A. Yes, I do.

13 Q. And is it a calendar showing the total amount of days that
14 Dave Kleiman was in the hospital?

15 A. That is correct. During this particular hospitalization.

16 Q. And as far as 2011 and 2012, it's a complete year, correct?
17 Each time is a complete year.

18 A. That is correct.

19 Q. So 365 plus 365, about 700 days?

20 A. That is correct.

21 Q. And if we look in 2011, there's another three months. So
22 then we have to add another 90 days?

23 A. Yes.

24 Q. So already we're at 790. And then we have, in 2011, about
25 another three months, right?

1 A. Yeah, or another two and a half months. Whatever.

2 Q. Another two and a half months. So we're talking 850 days,
3 give or take, continuous hospital stays?

4 A. That is correct. Yes.

5 Q. We had discussed how there were interruptions when Dave
6 Kleiman was in the hospital, correct?

7 A. That is correct.

8 Q. And I believe you had discussed how there were doctors
9 coming into his room checking up on him?

10 MR. BRENNER: Objection. Leading.

11 THE COURT: Sustained.

12 THE WITNESS: That is correct.

13 THE COURT: The objection is sustained. Rephrase.

14 MR. KASS: Okay.

15 BY MR. KASS:

16 Q. Were there interruptions during Dave Kleiman's stay in the
17 hospital?

18 A. Yes. I think I went over this previously. There are many
19 interruptions that occur. There are administration of
20 medications by the nurses. There's this turning every two
21 hours that has been talked about. There's interruption for
22 wound care, each one of which would have taken not just a
23 couple of minutes but longer than that.

24 Then there was physical therapy and occupational therapy,
25 and there were notes from those mentioned during the previous

1 discussions. Then there were interruptions from the multiple
2 medical teams coming in from different subspecialties in a
3 teaching hospital.

4 Over and all, there were multiple many interruptions
5 throughout the day for this patient or any patient, in
6 particular this patient because of the type of problems that he
7 had. The pressure ulcers, the Foley catheter, the IVs, all of
8 those lead to interruptions.

9 Q. Dr. MacIntyre, how do you know all of that occurred with
10 Dave Kleiman?

11 A. Well, I know from two ways. One is the documentation in
12 the record that the people who are doing the interrupting
13 documented what they did.

14 And secondly, from a personal knowledge of what happens in
15 hospitals. So I work in hospitals. I know what goes on. I
16 was a patient last April in a hospital and I know what happened
17 to me.

18 Q. With respect to Dave Kleiman, around how many times would
19 there be notes from a doctor or a physical therapist or a nurse
20 on a daily basis?

21 A. Oh, I would have to go back and do a little addition and
22 subtraction, but I would say from five to 10.

23 Q. So on every day, there were five to 10 notes with regards
24 to treatment of Dave Kleiman?

25 MR. BRENNER: Objection. Leading.

1 THE COURT: (No verbal response.)

2 THE WITNESS: Correct.

3 BY MR. KASS:

4 Q. And any of those notes could have talked about what Dave
5 Kleiman was doing at that point in time?

6 A. Well, it was either at the time or at the end of a shift,
7 the nurse would write a summary note for the shift.

8 Q. But the note would include something about Dave Kleiman,
9 correct?

10 MR. BRENNER: Objection. Leading.

11 THE COURT: The objection is sustained.

12 THE WITNESS: There might be --

13 THE COURT: Hold on. Hold on. There's no pending
14 question. The objection is sustained.

15 BY MR. KASS:

16 Q. So what would what those note -- what would those eight to
17 10 notes each day state?

18 A. They would state physical findings on the patient, items
19 related by the patient to the therapist, and what the therapist
20 did to the patient during the time.

21 Q. Okay. If we do a little multiplication over here. It's
22 going to be simple. It's going to be factor of 10, so it
23 shouldn't be too hard.

24 We had discussed there was about 810 -- 850 days that Dave
25 Kleiman was in the hospital during this last hospital stay?

1 MR. BRENNER: Objection. Leading.

2 THE COURT: Sustained.

3 BY MR. KASS:

4 Q. How many days had you testified approximately Dave Kleiman
5 was in the hospital during this last hospital stay?

6 A. Well, we just added it up and it came to around 850.

7 Q. And how many -- approximately how many times a day would
8 there be notes with respect to Dave Kleiman?

9 A. Well, I believe I said before five to 10, although I would
10 have to go back and do a little addition and subtraction to see
11 exactly.

12 Q. If we do some rough, rough arithmetic, around how many
13 notes would there be about Dave Kleiman's condition all
14 throughout that stay?

15 A. Well, again, five to 10.

16 Q. Well, if you were to multiply the 850 by five to 10, what
17 would you get?

18 A. I did pass high school math, but I can't do that
19 multiplication in my head without writing something down. But
20 it's a high number.

21 Q. Okay.

22 A. 850 times five -- well, times 10 would be 8,500. Times
23 five, it would be half of that. So somewhere between 4,250 and
24 8,500. How's that for mental addition and subtraction?

25 Q. Thank you.

1 And I just want to ask you one final thing. Did anything
2 that Mr. Brenner -- well, sorry. One thing before the one
3 final thing.

4 Was there any condition -- so I believe you had testified
5 that Dave Kleiman sitting down or on his back wasn't a good
6 position for him, correct?

7 MR. BRENNER: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. KASS:

10 Q. New question. Okay. What was the best position for Dave
11 Kleiman to be resting in?

12 A. Well, the best position would be either lying on one side
13 or lying on his belly. Now, that doesn't mean that he couldn't
14 lie on his back, so long as it wasn't for a prolonged period of
15 time. And it doesn't mean he couldn't sit down as in a
16 wheelchair or bed. It's just that he should interrupt that
17 every so often to offload -- like I used the terminology
18 before, to offload the pressure ulcers.

19 Q. And this will be the final round of questions. Was there
20 anything that Mr. Brenner asked you that changed your opinions
21 with respect to the interruptions that Dave Kleiman had
22 throughout the day?

23 A. I would say no.

24 Q. Did anything that he asked you change your opinion with
25 respect to Dave Kleiman's medical condition?

1 A. I would also say no.

2 Q. Was there anything that he said that would change your
3 opinion with respect to the medications that Dave Kleiman was
4 taking?

5 A. Again, I would say no.

6 MR. KASS: That's all, Your Honor.

7 THE COURT: All right. Thank you, sir.

8 Ladies and Gentlemen, you have the right to ask
9 Dr. MacIntyre questions. Do any of you have any questions for
10 Dr. MacIntyre?

11 If so, if you'll raise your hand. Let me give you the
12 opportunity to write down your question.

13 (Pause in proceedings.)

14 THE COURT: All right. And may I see the attorneys
15 sidebar, please?

16 (At sidebar on the record.)

17 THE COURT: All right. The first question reads as
18 follows: "When a patient is given a special overnight pass,
19 does the patient need to fulfill certain qualifications to be
20 able to leave the hospital?"

21 Any objection?

22 MR. FREEDMAN: Nope.

23 MR. BRENNER: No objection.

24 THE COURT: Okay. I just need one person from the
25 Plaintiffs and one person from the Defendant.

1 MR. BRENNER: No objection from the Plaintiff.

2 THE COURT: Mr. Kass, since you are --

3 MR. KASS: No objection from the Defendant.

4 THE COURT: All right. Second question: "Is the
5 patient required to have a companion (friend or family member)
6 to be able to leave the hospital?"

7 MR. BRENNER: Your Honor, I would object. That
8 potentially runs afoul of your motion in limine that said there
9 can't be anything about friend and family support. It is in
10 the order you ordered. I think it's in the motion in limine.
11 I could grab it, but I think it would run afoul.

12 MR. KASS: Your Honor, we have no objections to it.
13 They're simply asking what the requirements are, not whether
14 there was a friend or family member there.

15 MR. BRENNER: And also, I don't think it's relevant to
16 any of the issues in the case whether a friend or family member
17 was there. I think it runs afoul of your order.

18 THE COURT: I think it relates to capacity. It
19 doesn't speak of a particular sibling. The objection is noted.
20 It's overruled and the questions are proper.

21 (End of discussion at sidebar.)

22 THE COURT: All right. Ladies and Gentlemen, I want
23 to thank you for your questions.

24 There are two questions, Dr. MacIntyre, and they read
25 as follows:

1 The first question is: "When a patient is given a
2 special overnight pass, does the patient need to fulfill
3 certain qualifications to be able to leave the hospital?"

4 THE WITNESS: That is up to the physician who
5 authorizes the pass. In other words, if the patient is felt
6 not to qualify to be out for overnight by that physician, he
7 will not sign off on the pass. So I can't give specific
8 qualifications because it depends on the circumstances and
9 which physician it is that's authorizing it. But in the
10 opinion of that physician, the patient could have the pass
11 without it being detrimental to his treatment or health.

12 THE COURT: The second question reads as follows: "Is
13 the patient required to have a companion (friend or family
14 member) to be able to leave the hospital?"

15 THE WITNESS: I'm not familiar with the specific
16 requirement in that for this particular hospital. That would
17 probably be up to the physician that does the ordering.

18 In general, it would be prudent to have a companion
19 available to take the patient out of the hospital, but I can't
20 say specifically whether there was a regulation to that effect.

21 THE COURT: All right. Thank you, Dr. MacIntyre.

22 Any follow-up by the attorneys on behalf of the
23 Defendant?

24 MR. KASS: No, Your Honor.

25 THE COURT: On behalf of the Plaintiffs?

1 MR. BRENNER: No, Your Honor.

2 THE COURT: All right. Is Dr. MacIntyre excused?

3 MR. KASS: Yes, Your Honor.

4 MR. BRENNER: Yes, Your Honor.

5 THE COURT: All right. Thank you, sir.

6 You are excused.

7 (Witness excused.)

8 THE COURT: And the Defendant's next witness.

9 MR. MESTRE: The Defense calls Kimon Andreou.

10 THE COURT: All right. Thank you.

11 (Pause in proceedings.)

12 THE COURT: All right. Mr. Andreou, if you'll step
13 forward. If you'll remain standing, raise your right hand to
14 be placed under oath.

15 KIMON ANDREOU, DEFENSE WITNESS, SWORN

16 COURTROOM DEPUTY: Have a seat, please.

17 If you can just state your name and also spell it for
18 the record.

19 THE WITNESS: Kimon Andreou. K-I-M-O-N.

20 A-N-D-R-E-O-U.

21 THE COURT: Mr. Andreou, consistent with the CDC
22 guidelines, if you are fully vaccinated and you feel
23 comfortable, you are permitted to take your mask off while you
24 are testifying.

25 THE WITNESS: Thank you.

1 DIRECT EXAMINATION

2 BY MR. MESTRE:

3 Q. Good morning, Mr. Andreou.

4 A. Good morning.

5 Q. Can you give the jury a brief history of your educational
6 background?7 A. Okay. I have an undergrad in accounting and finance, a
8 master's degree in management information systems -- oh, sorry.
9 An undergrad in accounting and finance, a master's in
10 management information systems, and I am halfway through a
11 doctorate degree in information systems.12 Q. And can you give the jury a brief description of your work
13 background?14 A. My entire career, over 20 years, has been in the broader IT
15 space: network security, network administration, software
16 development, and data analytics. And that has been the primary
17 focus of my career over the past -- well, the majority of my
18 career.

19 Q. And where do you work now?

20 A. General Motors.

21 Q. And what do you do at General Motors?

22 A. I head up the data analytics team for the contact centers
23 there.

24 Q. Now, did you know David Kleiman?

25 A. Yes.

1 Q. When did you first meet him?

2 A. I met him in 2002 or '3, when we both worked for S-Doc, a
3 software -- security software company in West Palm Beach.

4 Q. What did you do at S-Doc?

5 A. I headed up the application development and the QA, quality
6 assurance, which is testing of software. And then it evolved
7 to also do sales engineering, which also added to my portfolio,
8 supporting the sales team on the field.

9 Q. What did Dave Kleiman do at S-Doc?

10 A. He was the chief information security officer, so he was
11 responsible for the server security side, the network security
12 side of the company and of the software we would sell.

13 Q. Did you work with him after S-Doc?

14 A. On occasion, he would ask me to -- on cases that he would
15 do for forensic work that he did, whenever he needed any sort
16 of programming help, he would come to me and I would write a
17 quick script or a quick program for him or any such thing.

18 Q. And why would he ask you to do that?

19 MR. BRENNER: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: He asked me because he just didn't know
22 how to program. So he knew that I knew how to program, so he
23 would ask me to do it.

24 BY MR. MESTRE:

25 Q. Dave Kleiman was not a programmer?

1 MR. BRENNER: Objection. Leading.

2 THE COURT: Sustained.

3 BY MR. MESTRE:

4 Q. Was Dave Kleiman a programmer?

5 A. No.

6 Q. Would it -- while you worked with him, did you get to know
7 his background and skill set?

8 A. Yes.

9 Q. Did you develop a friendship with Dave?

10 A. Yes.

11 Q. And how did that friendship develop?

12 A. We worked together for a few years and we would just spend
13 time outside of work as well, either going to dinner or going
14 to a gun show or just hanging out.

15 Q. Was he a good friend?

16 A. Yes.

17 Q. Would you consider him your closest friend?

18 A. He would be among my closest, yes.

19 Q. After you -- and I think you said you met him in 2002,
20 2003?

21 A. Yes.

22 Q. After you met him in 2002 or 2003, was he ever
23 hospitalized?

24 A. Yes.

25 Q. When was the first time that you know that he was

1 hospitalized?

2 A. I don't remember when, but he always had issues. He was in
3 a wheelchair, so he would always get some sort of infection
4 which would require him to be hospitalized.

5 Q. And how would that affect his ability to -- how would that
6 affect his day-to-day life?

7 A. Well, he would be in the hospital, so he couldn't -- he
8 wouldn't be at home. He wouldn't have access to all his
9 equipment. But until the last hospital stay, his stays, to my
10 recollection, were not lengthy.

11 Q. When was the -- what you're calling the last hospital stay,
12 when was that?

13 A. The one that he -- I don't know if he entered -- was it in
14 2010 or '11, but he was -- the one where -- the last hospital
15 stay before he died.

16 Q. Okay. So let me show you what I believe is in evidence.

17 MR. MESTRE: Mr. Reed, if you could pull up Joint
18 Exhibit 55 for me.

19 I believe this is in evidence, Your Honor.

20 MS. McGOVERN: It is.

21 MR. MESTRE: Okay. Can you publish this to the jury,
22 please.

23 BY MR. MESTRE:

24 Q. This is already a document in evidence, Mr. Andreou. If
25 you look at the email from Dave Kleiman on April 9th, 2008 at

1 2:18 a.m.

2 MR. MESTRE: If you could call that part out for me,
3 Mr. Reed.

4 BY MR. MESTRE:

5 Q. He says: "I've been laid up for a bit." And then a few
6 lines down he says: "I haven't worked in about 10 days."

7 Do you remember that? I know this is not an email to you.
8 But do you remember him being laid up at this time in 2008?

9 A. I -- I honestly don't remember that time frame, but he had
10 been -- he would end up in the hospital every now and then
11 because of those infections. I don't recall this particular
12 case.

13 Q. Okay. Let me pull up another exhibit.

14 MR. MESTRE: Mr. Reed, if you can pull up Joint
15 Exhibit 52, which I think is also in evidence, and publish it
16 to the jury, please.

17 BY MR. MESTRE:

18 Q. So this is an email, Mr. Andreou, from Dave Kleiman to
19 Craig Wright on February 19th of 2009. He says: "Actually, I
20 had some minor surgery."

21 Do you know what he was having surgery for at this time in
22 2009?

23 A. I'm not certain what it was. But no, I don't know -- I
24 can't say.

25 Q. But is that --

1 A. I can't say definitively.

2 Q. Apologies. But is that consistent with your testimony that
3 he was in and out of the hospital?

4 A. Yes. Yes. Yes. Because of his wheelchair, he would get
5 any minor scrape or scratch or whatever. He had -- because he
6 had no sense below the waist, it would end up getting infected.

7 Q. Okay. I'm going to show you another exhibit that's in
8 evidence. It's D1021.

9 MR. MESTRE: If you could pull that up, Mr. Reed.

10 (Pause in proceedings.)

11 MR. MESTRE: That's the wrong exhibit, but I don't
12 think I need it.

13 BY MR. MESTRE:

14 Q. If I told you that -- so the second time period that you're
15 talking about, what you called the last time period that he was
16 in the hospital, would that have been from September of 2010 to
17 March of 2013? Is that the period you're speaking about?

18 A. Yes. Yes.

19 Q. Okay.

20 MR. MESTRE: You can take down the exhibit, Mr. Reed.

21 BY MR. MESTRE:

22 Q. So during that -- we'll call it the last hospitalization or
23 the most recent -- would you visit Dave Kleiman?

24 A. Yes. Regularly.

25 Q. And where did you work at the time?

1 A. I worked for Royal Caribbean at the Port of Miami. So it
2 was a straight shot from the office to the VA.

3 Q. At that time, was Dave Kleiman at the Miami VA?

4 A. Yes.

5 Q. Where is the Miami VA?

6 A. It's right off of 395. So just take that from the office
7 over there, take the exit, and it was right off of the exit
8 straight. It would only take me maybe 10 minutes to get there.

9 Q. And would you go after work to visit?

10 A. After work. So I would usually show up between 6:00 and
11 7:00, I think.

12 Q. How often would you go?

13 A. Daily. Monday through Friday. Because I was in the office
14 and I would just go there. I would bring him food.

15 Q. Every day?

16 A. Almost.

17 Q. Did he ever ask you to take him Hooters wings, for example?

18 A. That was his favorite.

19 Q. Was there a Hooters on the way?

20 A. Yes.

21 Q. Can you describe the hospital room?

22 A. Sure. It was in the unit for spinal injuries, towards the
23 back of that. And he -- even though it was a two-bedroom,
24 usually he was on his own in there. And his bed was closest to
25 the door and he would have all of his stuff there.

1 Q. Were there times where he shared it with another patient?

2 A. Yes.

3 Q. Why would you go so often?

4 A. He was my friend.

5 Q. Your close friend?

6 A. Yeah.

7 Q. Did you ever visit him at home?

8 A. No.

9 Q. Do you know, when he was home, if he needed help with his
10 daily activities?

11 A. Not to my knowledge.

12 Q. Was Dave Kleiman shy?

13 A. He was private, not shy.

14 Q. Was he timid?

15 A. No.

16 Q. Strong personality?

17 A. Very strong.

18 Q. Do you know if he had a business partnership with Carter
19 Conrad and Patrick Paige?

20 A. Yes.

21 Q. How did you know that?

22 A. He told me.

23 Q. He didn't keep it secret?

24 A. No.

25 Q. Given his physical limitations, do you know whether Patrick

1 Paige and Carter Conrad helped him with his engagements?

2 A. I'm not aware of that.

3 Q. I should ask them.

4 I want to talk a little bit now about David Kleiman's skill
5 set, which I think you said you are familiar with. And you
6 have already said that he was not a programmer. Was Dave
7 Kleiman a coder?

8 A. No.

9 Q. Did you ever tell him that he couldn't code?

10 A. Yes.

11 Q. What did you tell him?

12 A. I would tease him --

13 MR. BRENNER: Objection. Calls for hearsay, Your
14 Honor.

15 THE COURT: Sustained.

16 BY MR. MESTRE:

17 Q. In your opinion, could Dave Kleiman code himself out of a
18 paper bag?

19 A. No.

20 MR. BRENNER: Objection, Your Honor. Argumentative
21 and calls for speculation.

22 THE COURT: Sustained.

23 BY MR. MESTRE:

24 Q. How would you describe his ability to code?

25 A. It was minimal to nil.

1 Q. Did he ever reach out to you and ask you for help with
2 coding?

3 MR. BRENNER: Objection. Asked and answered.

4 THE COURT: Sustained.

5 MR. MESTRE: Your Honor, I asked about the
6 programming. I haven't asked --

7 THE COURT: The coding?

8 MR. MESTRE: He has testified that he called him about
9 programming because he could program. I haven't asked him yet
10 if he called him about coding. It's not asked and answered.

11 THE COURT: I'll allow it.

12 BY MR. MESTRE:

13 Q. Did he ever call you about coding?

14 A. Yes.

15 Q. Why did he do that?

16 MR. BRENNER: Objection. Calls for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: Because he didn't know how and he knew
19 that I knew how to do that.

20 BY MR. MESTRE:

21 Q. I want to talk to you now about some papers that David
22 Kleiman was involved with. Did he ever discuss with you any
23 papers that he wrote?

24 A. Yes.

25 Q. Was he proud about the papers that he wrote?

1 A. Very much so.

2 Q. Did he keep papers that he wrote secret from you?

3 A. If he did, I wouldn't know.

4 Q. That's a good point. Did he ever mention a paper about
5 overwriting data that he worked on with Craig Wright?

6 A. Yes.

7 Q. Was that paper about secure wiping?

8 A. Yes.

9 Q. Was it also about recovering information from computer
10 devices?

11 A. It was about preventing the recovery.

12 Q. You improved my question. That's right.

13 Was it also about -- was it about overwriting data?

14 A. Yes.

15 Q. Would it be fair -- have you heard that paper referred to
16 or did he ever refer to that paper as a data wipe fallacy
17 paper?

18 A. I don't remember him using those words.

19 Q. But this paper that we're talking about now, was he proud
20 of it?

21 A. Yes.

22 Q. Did he mention it to you more than once?

23 A. Yes.

24 Q. How many times did he mention it to you?

25 A. Several times.

1 Q. So I want to talk to you about a thumb drive that there's
2 been testimony about. Do you know if he had a thumb drive that
3 he kept with him?

4 A. Yes.

5 Q. Did you ever see what was on it?

6 A. No.

7 Q. Did he always have it on his person?

8 A. Yes.

9 Q. Did he take good care of it?

10 A. Yes.

11 Q. Where did he keep it?

12 A. He kept it with his keys, usually attached to his
13 wheelchair or in his backpack.

14 Q. Did it ever leave his sight?

15 A. Not that I'm aware of. He was very careful about it.

16 Q. Do you know whether or not it was encrypted?

17 A. Yes, it was. He had encrypted information on it. I don't
18 remember if the whole thing was encrypted or parts of it, but
19 there was encrypted data on it, yes.

20 Q. And how do you know that?

21 A. Because he would tell me. And when he needed something, he
22 would have to type in his password.

23 Q. Is it fair to say that whatever was on it was very
24 important to him?

25 MR. BRENNER: Objection. Leading.

1 THE COURT: Sustained.

2 BY MR. MESTRE:

3 Q. Was whatever was on it important to him?

4 MR. BRENNER: Objection. Leading.

5 THE COURT: Sustained. Rephrase.

6 MR. MESTRE: I think I've made the point.

7 BY MR. MESTRE:

8 Q. I want to get to his finances now, Dave Kleiman's finances.

9 Do you know whether or not he was having financial
10 difficulties?

11 A. Yes. He did have.

12 Q. Were they serious or pretty bad difficulties?

13 A. Yes. His house -- he was always behind in his house
14 payments, in his FP&L payments, power; all sorts of bills he
15 was behind on.

16 Q. Okay. So let me break that down. Was he having problems
17 making his mortgage payments?

18 A. Yes.

19 Q. Did he ever tell you that his house was going to go into
20 short sale?

21 MR. BRENNER: Objection. Leading.

22 MR. MESTRE: That's not a leading question.

23 THE COURT: I'll allow it. Overruled.

24 THE WITNESS: Yes. He did tell me.

25

1 BY MR. MESTRE:

2 Q. Did he ever tell you that it might go into foreclosure?

3 A. Yes.

4 Q. Do you know whether or not he was trying to refinance?

5 A. I believe he mentioned that.

6 Q. He said to you -- he said that to you?

7 A. Yes.

8 MR. BRENNER: Objection. Leading.

9 THE COURT: Overruled at this point.

10 BY MR. MESTRE:

11 Q. Was he trying to refinance because he wanted to keep his
12 house?

13 A. That is the conclusion I came to. Why else would he do it?

14 Q. I don't know if you said this already, but I want to make
15 it clear. Was he also having problems paying for the
16 utilities?

17 A. Yes.

18 Q. Do you know if he was having trouble paying for his Comcast
19 bill?

20 A. I don't know that one specifically. I remember he would
21 complain that he's behind on his bills.

22 Q. Did Dave Kleiman like playing the Lotto?

23 A. Yes.

24 Q. Would you buy Lotto tickets for Dave Kleiman?

25 A. Yes.

1 Q. How often would you play with him?

2 A. Maybe once a month, but it was pretty frequent.

3 Q. Would you text with him?

4 A. Yes.

5 MR. MESTRE: If you could pull up only for counsel and
6 the witness and the Court what's exhibit Plaintiffs' 463. It's
7 also Defendant's 480.

8 BY MR. MESTRE:

9 Q. And, Mr. Andreou, I'd ask if you recognize these
10 documents -- this document, and we can scroll through it if you
11 need.

12 A. Okay.

13 MR. BRENNER: Can you do it a little slower, please?

14 MR. MESTRE: That's as far as I think you need to go.

15 BY MR. MESTRE:

16 Q. Do you recognize this?

17 A. Yeah. This is an exchange that I had with Dave.

18 MR. MESTRE: Can you go to the first page, Mr. Reed,
19 please.

20 BY MR. MESTRE:

21 Q. Are these text messages that you had with Dave?

22 A. Yes.

23 Q. Do you see a phone number where it says: "Participants"
24 and it says: "Dave Kleiman"?

25 A. Yep.

1 Q. Was that his phone number?

2 A. I don't -- I don't remember it by heart, but it's -- he did
3 have a 561 number.

4 Q. Okay. I think these days nobody remembers a phone number
5 by heart.

6 MR. MESTRE: Your Honor, I'd move for the admission of
7 Defendant's 480, Plaintiffs' 463.

8 MR. BRENNER: Mr. Mestre, we saw eight pages. Do you
9 know how many pages this is?

10 MR. MESTRE: It is about 198 pages. It's an exhibit
11 that was on the Plaintiffs' exhibit list.

12 THE COURT: Is there any objection?

13 MR. BRENNER: No objection, Your Honor.

14 THE COURT: Admitted into evidence.

15 (Defendant's Exhibit 480 received into evidence.)

16 MR. MESTRE: If we could go, Mr. Reed -- and I'm going
17 to take you through some of these texts. If we could go to
18 Page 36, which is Kimon, a bunch of zeros, 59. So the Bates
19 number is 59. The page number is 36.

20 Okay. There we are. And if you could highlight first
21 the date. It's Thursday, November 4th.

22 You don't need to call it out. If you could just
23 highlight it, just because it's hard to see.

24 BY MR. MESTRE:

25 Q. Do you see that's November 4th, 2010?

1 A. Yes.

2 Q. Okay. Would that have been the date of this text message?

3 A. Yeah.

4 MR. MESTRE: Okay. And if you could highlight -- and
5 if we could publish all of this to the jury now, please.

6 BY MR. MESTRE:

7 Q. You see it says: "Jody might not come on Saturday, sigh,
8 so you have to pick up the vaca fritta."

9 Do you see that?

10 A. Yeah.

11 Q. That was from Dave?

12 A. Yes.

13 Q. Who was Jody?

14 A. Jody was a coworker from S-Doc.

15 Q. Coworker of yours and Dave's?

16 A. Yes.

17 Q. Did you know Jody?

18 A. Yes.

19 Q. Was Jody a friend of Dave Kleiman's?

20 A. Yes.

21 Q. Do you know if Jody would help him physically at his house,
22 for example?

23 MR. BRENNER: Your Honor, objection to the relevance
24 of this line of questioning.

25 THE COURT: Overruled. I'll allow it.

1 THE WITNESS: I know that Jody would visit him at
2 home. I don't know what they did.

3 MR. MESTRE: Okay. If we can go, Mr. Reed, to -- do
4 you prefer the page number or the Bates number?

5 The Bates.

6 Okay. So Bates 69. The first three or four messages
7 and the date, if you could call that out.

8 BY MR. MESTRE:

9 Q. Okay. So you see here, Mr. Andreou, a text from Dave
10 Kleiman on December 24th. I'm going to read it. It says:
11 "Okay. Well, that got all screwed up. The OR doctors saw
12 something wrong with my knee, called X-ray to the OR, and they
13 saw one of the many metal rods I have was causing the infection
14 so they had to cancel the current surgery and open my knee.
15 Now they have to schedule to have the rod removed and
16 reschedule the other surgery. Whatever. Guess I will live
17 here forever."

18 So do you see that?

19 A. Yes.

20 Q. So did you visit him around this time?

21 A. Well, from the date -- that's Christmas Eve, so I wouldn't
22 have visited him until January when I got back.

23 Q. Not necessarily this day, but around that time, would you
24 have seen him?

25 A. Yeah.

1 Q. And how -- how was he doing physically at this point?

2 A. Well, he was laid up in bed in the hospital, as expected,
3 but his mood was down because he wanted to get out.

4 Q. Were there other times during this hospital stay, this last
5 hospital stay, where his mood was down?

6 A. Yes.

7 Q. And what were some of the ways in which you observed that?

8 A. Well, when he would -- he wouldn't have his usual upbeat
9 personality. He wouldn't crack jokes. He wouldn't make
10 comments like he's making here, like: "Whatever. I guess I'll
11 live here forever."

12 MR. MESTRE: Let me go to Kimon 77.

13 And from "brought to ICU" to the end, if you can call
14 that whole thing out.

15 BY MR. MESTRE:

16 Q. So let's keep looking at how he was doing. Okay. This --
17 and I will -- we can go back and look at it, but I will
18 represent that that is a text from Friday, March 4th, 2011.

19 MR. MESTRE: He found it as fast as I could say it.

20 Thank you.

21 So we can go to the next page.

22 BY MR. MESTRE:

23 Q. So let's see how he's doing. He says -- so Dave says:
24 "Brought to ICU," intensive care unit. "Only have phone for
25 five minutes. If you have anything important, let me know.

1 Will check text messages once I'm okay."

2 You say: "How can you be okay and be taken to ICU? Does
3 not compute."

4 Dave says: "I was not okay, but now okay. Dorky."

5 "Ah. So what happened? Was it acute steak deficiency,
6 which is fine?"

7 "Yes."

8 He, still in ICU: "Yes, but they took the tube out of my
9 nose."

10 So do you see that? Did I read that accurately?

11 A. Yes.

12 Q. Okay. So were you worried that he was in the intensive
13 care unit?

14 A. Yes.

15 Q. Okay. And were you concerned that he had a tube in his
16 nose?

17 A. When I found out, yes.

18 Q. Okay. And did you visit him at about this time?

19 A. I don't remember, but I would not have visited him if he
20 was in the ICU.

21 Q. Would you have visited him after perhaps?

22 A. Yeah. When he was back in his room, yes.

23 Q. Okay. Do you remember visiting him after this particular
24 time?

25 A. I know I did visit him after this. I don't remember which

1 day, though, when I started going back.

2 Q. He wouldn't be working while he was in intensive care?

3 MR. BRENNER: Objection. Leading.

4 THE COURT: Sustained.

5 MR. MESTRE: Let's go to Kimon 87.

6 BY MR. MESTRE:

7 Q. And this is a page -- you see at the top it says: "Monday,
8 April 25th, 2011." So that's the date. And about the middle
9 of the page, it says --

10 MR. MESTRE: I want to highlight where it says: "I
11 know, but it's" -- exactly.

12 And the rest of the page.

13 Great.

14 BY MR. MESTRE:

15 Q. So Dave says: "I know, but it is like I cannot even go
16 down the hall to get soda out of the soda machine. Do you know
17 how imprisoned, weak, useless that makes you feel, especially
18 if you deal with it for months upon months? I bet just a few
19 weeks of that would drive a normal person insane."

20 Now, this must have been very hard for you to see. But how
21 did you -- what was your view about his mental health at this
22 point?

23 MR. BRENNER: Objection. Calls for expert opinion.

24 THE COURT: Sustained.

25

1 BY MR. MESTRE:

2 Q. How did you think he was doing?

3 A. He was obviously unhappy.

4 Q. Did you see him shortly after this or before?

5 A. Most likely.

6 Q. Do you remember?

7 A. I know that I would visit him regularly. I just don't
8 remember the dates.

9 Q. But do you remember -- were there any moments that you saw
10 him where he may have felt or acted in a way consistent with
11 this text message?

12 MR. BRENNER: Objection. Leading.

13 THE COURT: Overruled. I'll allow it.

14 THE WITNESS: Yes.

15 BY MR. MESTRE:

16 Q. And how was he?

17 A. He would be down, wouldn't want to talk too much. And he
18 just -- Dave usually was very jovial, would always want to talk
19 about something, no matter what it is. When he would be --
20 when he would be down, he just wouldn't want to talk about
21 anything. He would just close up.

22 MR. BRENNER: Your Honor, may we approach for one
23 minute?

24 THE COURT: All right. Come on forward.

25 (At sidebar on the record.)

1 MR. BRENNER: Thank you, Judge.

2 I asked to approach because I'm concerned where this
3 is heading. I want to make sure the witness has been
4 adequately counseled. Your Honor has entered an order
5 regarding they can't put into evidence that he was suicidal or
6 having suicidal thoughts. And I don't --

7 MR. MESTRE: That is absolutely not where I'm headed.

8 MR. BRENNER: I'm not suggesting Mr. Mestre is heading
9 there, but I am suggesting that I'm afraid the witness is.
10 I've been letting it go, but as we keep going --

11 THE COURT: Yeah. Maybe the witness is unaware.
12 So how far are we going here?

13 MR. MESTRE: I'm trying to establish his physical
14 ability during this period of time and his mental ability,
15 which they have put into question. He just spent an hour with
16 our previous expert doing that, and this is a firsthand
17 recollection of what happened.

18 THE COURT: Okay. I just -- I merely asked how far.

19 MR. MESTRE: I have no intent to ask that question
20 remotely. I don't believe I'm going to elicit that testimony.
21 But Mr. Brenner, I understand what you're saying, but I'm not
22 going to ask any question that I think comes near that.

23 THE COURT: Is this witness aware of the Court's
24 prohibition on that topic?

25 MR. MESTRE: I couldn't tell you specifically because

1 my intent was never to do that.

2 THE COURT: Well, that's why I asked how far you're
3 going.

4 MR. MESTRE: We didn't talk about that. I have never
5 spoken to him about the suicide --

6 THE COURT: That's why there's a danger here if we
7 continue.

8 MR. MESTRE: Well, you know, I mean, we can -- may I
9 consult for a moment?

10 (Pause in proceedings.)

11 MR. MESTRE: So I can move on from this subject matter
12 now. We're going to have the lunch break in 10 minutes and
13 then I can give him that admonition.

14 THE COURT: Okay. That's fair.

15 MR. BRENNER: And when you do, I would just ask he
16 also be advised of the other Court's order regarding the
17 familial relationship part of the order. So we make sure he
18 doesn't --

19 THE COURT: Right. You're not going to be asking who
20 else may have been at his house or anything about --

21 MR. MESTRE: I'm sorry. I'm also losing my hearing.

22 THE COURT: You're not asking about who may have been
23 at the house or the hospital or his relationship with his
24 brother, correct?

25 MR. MESTRE: I wasn't intending to ask that either.

1 THE COURT: Okay. Then I think we're good.

2 MR. BRENNER: Thank you, Judge.

3 THE COURT: All right. Yvette, thank you.

4 (End of discussion at sidebar.)

5 THE COURT: All right. Let us continue.

6 MR. MESTRE: Read me the last question, please.

7 (Read back.)

8 MR. MESTRE: I'm going to move on. I'll come back to
9 that. And if we can go to Bates number 88, the very next one.

10 BY MR. MESTRE:

11 Q. And if you look in the middle of the page, and I think --
12 and the date is on the page before. The date, I'll just
13 represent this is -- this is Monday, May 2nd, 2011, just for
14 context. So he says: "Oh, yeah, on the 19th. Who knows if
15 I'll even make it through this one."

16 Do you see that?

17 A. Yes.

18 Q. Is that yet another surgery?

19 A. Yes.

20 Q. Did you visit him after this surgery?

21 A. Most likely.

22 Q. And do you recall how he was doing physically after that
23 surgery?

24 A. I don't recall this particular surgery. He had several
25 surgeries while he was there.

1 MR. MESTRE: So let me move on now to Kimon 90.

2 BY MR. MESTRE:

3 Q. And this is a text message. The dates are hard to see.

4 Tuesday, May 3rd, 2011. Do you see that, just for context?

5 A. Yes.

6 Q. Okay. So Dave says -- and I want to talk a little bit
7 about the financial troubles now. Okay?

8 So Dave says: "So my electric is good for another four
9 months, my water for three months, 40 a month even if I don't
10 use any water. I have to pay 300 to Comcast before they will
11 disconnect the service."

12 You say: "And how many months is the penalty waived?"

13 "No. I owe them a back bill from last month. My account
14 is suspended, so they can't do anything until I pay it."

15 "Oh, okay."

16 "Funny, I was watching HBO this weekend on Xfinity. Lady
17 said my account has been suspended for 11 days."

18 Do you see that?

19 A. Yes.

20 Q. Have I read that accurately?

21 A. Yes.

22 Q. Okay. Is this an example of the financial troubles that
23 you testified about before a few minutes ago?

24 A. Yes.

25 MR. MESTRE: Okay. So if we can move to Kimon 104.

1 BY MR. MESTRE:

2 Q. And he says near the bottom -- and the date here from the
3 prior page, it's May -- goodness -- May 31st, 2011. And he
4 says --

5 MR. MESTRE: If you can now go to 104.

6 BY MR. MESTRE:

7 Q. -- "Whenever you go home later, you have to stop at your
8 Publix or whatever for Powerball tickets. It's huge tonight,"
9 gives a number. "Quick Picks for me, please. If I win, I'll
10 give you 20 million."

11 Do you see that?

12 A. Yes.

13 Q. Did you believe him?

14 A. Yes.

15 Q. Was he a generous person?

16 A. When he could.

17 Q. Sir, I want to get back to the health issues.

18 MR. MESTRE: If we can go to 114, Kimon 114.

19 Now, this is Saturday, July 30th, 2011. If you can
20 bring up the rest of it.

21 Exactly.

22 BY MR. MESTRE:

23 Q. So Dave says: "Out of surgery. In ICU."

24 When he says: "In ICU," do you know if he meant the
25 intensive care unit?

1 A. Yes.

2 Q. Okay. So he says: "Out of surgery. In ICU. Everything
3 is fine. Just got my phone. Forgot to leave it off on
4 Wednesday, so the battery's only 35 percent. So my phone may
5 be off today. Text messages are easiest, as the intensive care
6 unit is supposed to be a quiet place."

7 "Got it. I called SICU yesterday" -- that's you. What is
8 SICU?

9 A. I believe it was the spinal ICU.

10 Q. Spinal intensive care unit.

11 Okay. So: "I called SICU yesterday to ask about you, but
12 you were sleeping. I take it everything went well?"

13 So was this yet another surgery?

14 A. Yeah. He had -- it was surgery after surgery after surgery
15 with him.

16 Q. Do you know what this one was for?

17 A. No. I don't recall.

18 Q. Do you recall what his physical condition was while he was
19 in the intensive care unit?

20 A. I didn't visit him there, but he -- he was not well.
21 That's why they kept him at the VA. He would get infections.
22 He would have -- they would have to scrape his -- scrape the
23 bone. So he would always have issues while there.

24 Q. Okay. And I know that this -- I know this is hard. So I'm
25 going through it, but I understand that it's your friend and

1 it's not easy.

2 MR. MESTRE: So if you go -- let's go to Page Kimon
3 115. Same date. This is the same string.

4 BY MR. MESTRE:

5 Q. So you say: "No more surgeries, right?"

6 He says: "Nope. Woo-hoo. So Chima in October."

7 Is Chima a restaurant?

8 A. Yes.

9 Q. Okay. And he says: "You are buying because I'm broke."
10 You see that?

11 A. Yeah.

12 Q. Okay. Is that consistent again with the money issues that
13 he was having that you testified about before?

14 A. Yes.

15 Q. Did you think he was broke?

16 A. He had no reason to lie.

17 MR. MESTRE: So if we can go to Kimon 130.

18 BY MR. MESTRE:

19 Q. And this is -- if you look at the page before -- oh, we
20 don't need to look at the page before. It's right there. So
21 it's Sunday, October 30th, 2011. Do you see that?

22 A. Yes.

23 Q. Okay. So he says -- Dave says to you: "Had fever every
24 night all week. Going for CAT scan today."

25 Do you see that? Did I read that correctly?

1 A. Yes.

2 Q. Okay. So were there -- well, do you have any idea what
3 this particular CAT scan might have been for?

4 A. No. Just by reading the texts.

5 Q. Did he often have -- we've talked about surgeries, but this
6 is not a surgery. This is a CAT scan and he says he has a
7 fever. Other than the surgeries, were there instances like
8 this one, others where he's not feeling well because he's
9 having procedures done at the hospital?

10 A. Yes.

11 Q. And did that happen often during the time that he was there
12 from 2011 to 2013?

13 A. I don't know how often, but it would happen frequently
14 enough. He wouldn't always tell me. As you could see here, he
15 wouldn't always tell me.

16 MR. MESTRE: Your Honor, this may be a good moment to
17 break.

18 THE COURT: All right. Ladies and Gentlemen, let's
19 take our one-hour recess for lunch. I'll see you go back here
20 at 2:00. Have a pleasant lunch.

21 (Jury not present, 12:58 p.m.)

22 THE COURT: Mr. Andreou, we'll see you back here at
23 2:00.

24 Okay. Have a pleasant lunch.

25 MR. BRENNER: Thank you, Your Honor.

(Adjourned for lunch 12:58 p.m.)

1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at
8 and reported in machine shorthand the proceedings had the 18th
9 day of November, 2021, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 124.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida this 28th day of November, 2021.

16
17 /s/Yvette Hernandez
18 Yvette Hernandez, CSR, RPR, CLR, CRR, RMR
19 400 North Miami Avenue, 10-2
20 Miami, Florida 33128
21 (305) 523-5698
22 yvette_hernandez@flsd.uscourts.gov
23
24
25

COURTROOM DEPUTY:

[3] 3/10 83/2
92/16

MR BRENNER: [1]
76/2

MR. BRENNER: [96]
3/4 3/14 5/1 5/8
5/15 5/22 5/25
16/14 17/7 17/14
21/11 21/14 24/5
27/21 36/3 36/20
39/14 43/4 43/25
44/5 44/11 45/1
45/25 46/12 46/22
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52/8 53/2 53/12
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